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THE QUEEN vs. GEORGE PREEPER,

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INDICTMENT FOR MANSLAUGHTER,

TRIED AT HALIFAX BEFORE MR. JUSTICE WILKINS,

AT THE SITTINGS BEFORE MICHAELMAS TERM, 1859.

"I am pleading in defence of those laws which you declare you will maintain and preserve, and I am doing my duty to my client—so that I am not to be daunted with threatnings,"—*Extract from a speech of Lord Hale, as Counsel in Lord Grey's case, being his last appearance at the Bar.*

"For twelve honest men have determined the cause,
Who are judges alike, of the facts and the laws."

Lives of the Chancellors.

FOR THE PROSECUTION.

HON. JAMES W. JOHNSTON, ATTORNEY GENERAL, and W. J. JOHNSTON, Esq.

FOR THE PRISONER.

HON. WILLIAM YOUNG, HON. JONATHAN McCULLY, W. Q. SAWERS, Esq.

HALIFAX:

PRINTED BY JAMES BOWES & SONS.

1859.

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THE QUEEN vs. GEORGE PREEPER.

THE trial of George Preeper, indicted for manslaughter, and charged with slaying one Patrick Hurley on the 12th day of May, 1859, at Grand Lake, in the County of Halifax, having excited unusual interest, has been considered of sufficient importance to deserve publication in pamphlet form. The 12th of May, 1859, was the day of a General Election in the Province of Nova Scotia. Patrick Hurley, the deceased, lost his life, as will be seen, in a disturbance of the peace, which occurred near Schultz's Inn, on the main post road leading from Halifax to Truro.

On the day after his decease, Edward Jennings, Esquire, one of the Coroners of the County, held an inquest upon the body of Hurly, and a verdict was returned, charging Preeper and nine others, with wilful murder. Three of the parties so charged—Preeper, the defendant, with John Kenty and James Kenty—within a day or two afterwards surrendered themselves, expecting to be admitted to bail. The case of the Kentys was laid twice before the Judges of the Supreme Court at Chambers, once before Judge Wilkins and a second time before him, associated with Judge Bliss. Affidavits denying the charge were produced and read, and bail offered to any reasonable amount. These applications were opposed by the Attorney General, and their Lordships decided, under such circumstances, not to admit the prisoners to bail.

Petitions were shortly after presented, on behalf of the prisoners, to His Excellency the Lieutenant-Governor, protesting their innocence, and asking for a special session of the Supreme Court, at which to take their trials, declaring their readiness to meet the charges against them, and their ability to vindicate themselves from the imputations resting upon them, by reason of the Coroner's Inquest. At the time this inquest was taken, it would seem, that the excitement produced by the death of Hurley was at its height, and the only witnesses examined before the Coroner were voters and supporters of the Government candidates, Messrs. Falconer and Gladwin. The first, and one of the principal witnesses called by the Attorney General on the trial now reported, as will be seen, was one Brian Kennedy, and on examination it was discovered that he had acted as a juror, and actually signed the Coroner's Inquest.

The prayer of the petition of the prisoners for an early trial, and a special session of the Supreme Court, was refused, and they were all consequently

compelled to remain in Halifax jail, from the middle of May to the middle of November, *six entire months*.

The Supreme Court commenced its sittings at Halifax on Tuesday, the 26th day of October. Thereupon the Attorney General laid before the Grand Jury an indictment, charging Preeper, the two Kentys brothers, and seven others, supporters of the Opposition candidates, Messrs. Esson and Annand, *ten in all*, with the crime of *murder*.

On the 1st of November, and about a week after the Grand Jury commenced their deliberations, they returned a "true bill"—and on the next day the Attorney General moved for the arraignment of the prisoners. The following account of what occurred is taken from the *Morning Chronicle* newspaper of that date, and may be relied upon as punctiliously correct:—

"Yesterday morning, the 2d November, the Attorney General having moved for the arraignment of George Preeper, charged as principal with the murder of Patrick Hurley, at the election riot at Schultz's on the 12th May last, and John Kenty and James Kenty, prisoners in Court—seven others being charged as aiding and abetting—an application was made on behalf of the three prisoners to defer the arraignment, on the ground that the Bill of Indictment had been found by *only nine Grand Jurors*, being a majority of *those present*.

"Affidavits were read, disclosing the fact that a difference of opinion having arisen among the jury as to whether less than twelve could find a Bill, one of their number was deputed to make inquiry of the Judge; an answer was returned—which must of course have been a mistake—that, if found by a *majority*, it was sufficient.

"That the Bill was found by less than twelve, seems beyond all doubt. The Grand Jurors, who speak of the finding, uniformly state this fact, and assert that they were misled and mistaken as to the law, if it required the concurrence of twelve.

"Some of the jury decline to discuss the subject, under the impression that it is one of the secrets that ought not to be revealed; others of them say—and, *we think, properly*—that while they decline to state who voted for, or against the finding, or what this or that jurymen said or did, yet that, so far from it being a secret to be kept that less than twelve found the Bill, they feel themselves bound to state the fact, in order that if they have erred in a matter where life and death are concerned, the error may be rectified *before it is too late*.

"The prisoners' counsel therefore asked for further time till this morning, to advise with the prisoners, and to decide what course ought to be adopted. This was unopposed by the Attorney General, and so the matter stands.

"Ten men indicted for *murder*—one as principal, and nine as accessories, —and the indictment, to a moral certainty, found by less than twelve Grand Jurymen! We have nothing further to say on this subject at present."

In the next issue of the same paper appeared the following remarks:—
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with the Bill of Indictment for murder found against George Preeper, and nine others, charged with killing Patrick Hurley, at the election riot, which occurred at Schultz's on the 12th May last.

"On Thursday morning the prisoners—Preeper, and the two Kentys brothers, who have now lain in jail since May on a *voluntary surrender*—were again brought down to the Court, Mr. Justice Wilkins presiding. The Attorney General again moved for their arraignment. This was opposed by the Hon. Mr. Young and Hon. Mr. McCully, two of the prisoners' counsel, on the ground that the indictment had been illegally found—but *nine Grand Jurors concurring*. They proposed to submit an affidavit of the Foreman of the Grand Jury to that effect, and who, it was alleged, was then in Court ready to attest to the fact, providing the presiding Judge was of opinion that it would not involve any violation of his oath of office. Several authorities were read to show what were and what were not the secrets which Grand Jurors could or could not with propriety disclose. Further time was taken to consider the subject. His Lordship commenting upon the case, said that unless such a course were permitted, he did not see how such an error—supposing it to exist—could be remedied. As matters were before him, however, he was bound to assume that all was right, and he declined to advise the Foreman of the Grand Jury, leaving the matter to his own judgment and those with whom he might see proper to consult. The Foreman declined, under these circumstances, to make the required affidavit, and the prisoners were subsequently placed at the bar. On the indictment being read, they severally protested against the proceedings, alleging that "the indictment had been informally found," and severally pleaded "not guilty under protest."

"Being asked by the Court when they would be ready for their trial, their counsel replied that their witnesses were all at a distance—some in this, and some in adjoining counties—and they required until that day week, Thursday, 10th November. This the Attorney General opposed, and named Tuesday, the 8th. Some argument arose between the Attorney General and Mr. Sawers, the Attorney General refusing the later day. The Judge then fixed the trial for the 8th, with leave to the prisoners' counsel to move on affidavit for the later day.

"A few moments before the Court rose, on the same day, Mr. Justice Wilkins stated that he wished to make a remark in the presence of the Attorney General and the counsel for the prisoners, on the subject of the indictment found, and what had occurred in the morning relative to the proposed affidavit of the Foreman of the Grand Jury.

"He had since thought over the matter, and he saw no impropriety in a Grand Jurymen disclosing a fact which had no tendency to implicate any party, but merely to disclose some supposed error or mistake which might have occurred. He thought that substantial justice might be defeated altogether, unless it were allowed, and especially in a case of life and death. He had, since the morning, had an opportunity, he said, of consulting upon the subject with His Lordship the Chief Justice and with Mr. Justice Bliss, and they

quite concurred with him in his opinion. He thought it was his duty to make this remark now, otherwise five or six days might possibly be consumed in a trial which might, perhaps, be nugatory. He would also remark that, under the laws of this Province, he saw no objection to re-summoning the Grand Jury during sittings, notwithstanding they had been discharged.

"We are anxious in no way to prejudice the question, or the case of these prisoners; but the matter has most certainly got into a very curious, and, we believe, extraordinary condition. The prisoners were all remanded.

"Bench Warrants were moved for, against the parties indicted but not in custody."

In the next number of the same paper appeared the following:—

"A new feature has now presented itself relative to the indictment against Preeper and others for the murder of Hurley.

"On Saturday Mr. Justice Bliss being again upon the bench, he directed the Prothonotary of the Court to issue a new *venire* to the Grand Jury for Thursday next, when he should enquire from them personally in open Court, as to the fact whether the indictment had, or had not been found by twelve of their number.

"Having endeavored to get this fact before the Court before the arraignment of the prisoners, their counsel, it appears, declined to move further, after the prisoners had pleaded, under protest, not guilty. What steps are to be taken after the jury meet again, remains to be seen."

Then, in a future number, we have the history of the case continued on the same authority as follows:—

"On Thursday morning, 10th inst., Mr. Justice Bliss, attended by Mr. Justice DesBarres and Mr. Justice Wilkins, came down to the Supreme Court. Mr. Justice Bliss ordered the Prothonotary to call the Grand Jury on the new *venire*, when thirteen only answered. He then called attention to what had occurred relative to their former finding in the *Queen vs. Preeper* and others, and referred to two affidavits which had been filed, by which it appears that one or some of the Grand Jury had stated that the finding was by nine of their body. If this were so, he said, it would be but a solemn mockery to proceed with the trial. He referred to the fact, that one of their number had applied to him in the early part of the sittings, to know if the Grand Jury could alter the indictment then before them, and that he had referred them to the Attorney General, stating that he, as crown officer, would prepare any indictment they might require. But he said that no question had been asked him, as to whether a majority, being less than twelve, could find a bill, or he should certainly have given explicit directions on that point. He now wished to know of the jury themselves, whether less than twelve had concurred in the finding.

"Mr. W. Metzler, the foreman, explained to the effect that there were seventeen jurors present at the former finding—that there were *nine* for, and *eight* against the bill.

"Judge Bliss, of his own mere motion, then ordered the bill to be quashed.

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"The Attorney General immediately submitted a new bill for manslaughter against the same ten parties, and a great body of witnesses for the crown were re-sworn. After some deliberation, the Grand Jury returned, finding a true bill against *Preeper only, for manslaughter.*

"The prisoners were then again brought down. Preeper, upon being arraigned, protested against the indictment as illegal—it having been found by this Grand Jury called together on a new *venire*, but who were not re-sworn,—and he again pleaded 'Not Guilty, under protest.'

"The two brothers, John and James Kenty, who voluntarily surrendered themselves in May last, and were refused bail, and had laid in prison ever since, were then discharged by proclamation. They were put under recognizance in £10 each to give evidence for the crown on the trial, if required. The trial of Preeper was fixed for Monday, the 14th inst.

"Human life has been taken. Justice, and a due regard to the majesty of the law, demand a full, fair, public investigation. And we are glad that an opportunity for it will now be afforded.

"When the facts connected with this riot and homicide are made public, the country will be in a condition to form a just estimate of the conduct and criminality of both the accused and the accusers."

On Monday, the 14th November, the cause was called, and the following persons answered as jurors, namely:—

Wm. McCulloch, Wm. Compton, Geo. E. Morton, H. G. Laurilliard, David Sheppard, Richard Phelan, Alex. Dow, Evan McPhee, Thomas Condon, John Dunphy, and Dennis Shea. None other of the jurors being in attendance, the Sheriff was instructed to summon other jurors under the statute, which provides that if a sufficient number of jurors do not attend, the names of those who do not attend shall be returned to the box as if they had not been drawn, and the Prothonotary shall draw the names of others liable to serve, and shall cause the Sheriff immediately to summon those whose names have been so drawn to attend forthwith.

The prisoner was then remanded, to be brought down on Friday.

On Friday the Court met, and the jury having been called, eighteen answered to their names; of these the following were empannelled and sworn:—Charles C. Tropolet, Thomas Morris, Archibald Morton, E. W. Chipman, David Sheppard, John Parker, junr., Evan McPhee, Wm. McCulloch, Alex. Dow, John McNab, H. G. Laurilliard, John Geldert. Mr. Tropolet was chosen foreman.

The following jurors were challenged by the prisoner:—Owen Donohoe, P. S. Kelly, Geo. E. Morton, John Dunphy, Richard Phelan, Dennis Shea, John Murphy, Wm. Casey.

At the suggestion of the Attorney General, the witnesses on both sides were ordered to remain out of Court while the examinations were going on.

The jury being sworn, and Mr. Tropolet appointed foreman—

The learned Attorney General said:

Gentlemen of the Jury.—You are empannelled to try the prisoner at the bar, George Preeper, for the manslaughter of Patrick Hurley. The indict-

ment states that the prisoner, on the 12th of May last, caused the death of Hurley. (The Attorney General here explained to the jury the nature of the crime of manslaughter, to establish which it is not necessary to prove malice; and observed that this case was freed from a great many of the complications which would have surrounded it had the charge been that of murder.) The case for the prosecution would be simple in the extreme. It was only necessary to prove that the prisoner caused the death of Hurley. The want of malice could not excuse the offence. It merely reduced the crime from murder to manslaughter. There was only one difficulty that could possibly perplex the jury, and that was, to fix upon the prisoner the very act that caused the death of Hurley—to prove that he was the man who pulled the trigger of the gun which caused his death. In reference to that point he would observe that it was not necessary to prove that the prisoner was the man who fired the shot. The law is clear, that when a number of persons assemble together, with firearms in their hands, for an unlawful purpose, and a death results, they are all equally guilty, and can be tried as principals. But in this case he did not apprehend that any such question could arise, as he believed the evidence would distinctly prove that the prisoner was the man who had fired the gun which caused the death of Hurley. It would be proved that Patrick Hurley was killed on the 12th of May last, during the last general election, at or near the polling place at Shultz's, on the eastern road. It appears that during the early part of the day everything went off as quietly as is usual on such occasions, and that after the business of the day had been pretty well got through, some quarrelling took place, and a party of men engaged in the quarrel left the polling place, and after some time returned with guns in their hands, and challenged their opponents to fight. The party challenged, who were not armed, attempted to disarm the others, and in the scuffle the death of Hurley took place from the discharge of a gun carried by one of the party. The jury had to ascertain whether that death was caused by the prisoner, or whether his connection with the party who were armed was not sufficient to implicate him in the crime. He would merely observe that in the previous part of the day the proceedings were as quiet and orderly as is usual at elections. After Hurley was shot, it is true that a good deal of violence took place, the passions of his friends having been excited by his death. But he would remind them that what occurred after the homicide took place had nothing to do with the consideration of this case.

The learned Attorney General then proceeded to call the witnesses for the prosecution.

BRIAN KENNEDY sworn. I was present on the occasion of Patrick Hurley's death. I saw the prisoner at the bar on that occasion. He had a gun in his hand. I did not mind the description of gun. About 15 or 16 others were armed; they were all together; they came from John Kenty's house towards the polling booth at Grand Lake. Kenty's house is on the Halifax side of the Grand Lake. The polling place was opposite White's tavern. I was told there was a row on the road. When I left White's house, several others were ahead of me. I said a good many had better go up; it would

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not be right to have two or three killed up there. A lot followed me. I said to David King, why didn't he put away his gun; what did they want of guns there? I took hold of one of the guns. I saw prisoner standing on some logs. Hurley was near me. I was either knocked down or fell when the shot went off. I heard the discharge. Preeper jumped off the end of the log. I could not tell that the discharge was from the gun held in Preeper's hand. I saw the smoke from the gun; it was quite handy to me. When I fell, the gun was presented forward from Preeper's hip. Preeper was the only person standing there with a gun at that time; some were retreating, and others were having the guns taken from them by our party. After the shot was fired, Preeper retreated across the river. I went along the road to way-lay him, and he took to the bushes. His hat fell off. When I came back, Hurley was lying on his back dead. Hurley had nothing in his hand. I had a stick in my hand. As our party was going up, Preeper's gang said, "Come along, you cowardly b——s." They stood in front and rear rank. The front rank men had their guns presented. I saw Geo. Gray, David King, John Reeves, Alex. Taylor, and George Preeper with guns; couldn't say whether the Kentys had guns. David King's gun was taken from him and broken.

Cross-examined by Mr. McCully. I have been in Nova Scotia five years. I came from Newfoundland, and landed at Cunard's wharf. I came here in May; no person came with me. I worked a year for Mr. Brown, Newtown, and have since been employed on the railroad. I have worked for Messrs. Black & Sutherland. I worked on the railroad about five years. I first worked for Turnbull at Three-mile House. In May last I was working for Mr. Sutherland at Grand Lake, getting out building stone. I was employed there about a fortnight before the election. Previous to this I worked at Fletcher's Station. I worked about half a mile above Grand Lake station; about twenty-six of us were employed there. I have been working at same place repairing track under Mr. Feetham. I have been employed since 12th May under Government. I get 4s. 6d. per day. I got 7s. 6d. per day when I worked for Mr. Sutherland about a fortnight just before the election. I didn't get paid for the election day. On the election day the polling had just commenced when I got there, about 10 o'clock. I voted about 1 o'clock. I didn't vote for anybody. I made a mistake and split my vote. (Laughter.) I intended to vote for Gladwin and Falconer. I felt pretty cross after that. A disturbance took place between Rutherford and Gilfoy. I took Gilfoy off him; the scuffling wasn't worth while. This was the first difficulty that day. The next was at White's. Our party had a separate room. The Opposition party were there also. There was some squabbling in the hall. I went to see what it was. Mr. White was there; John Reeves was there. Reeves and I went into the Opposition room; they gave me a drink. I asked if there was any person in the room who had challenged Gilfoy; they said not. This was about two o'clock. This is what I understood the squabble was about. Mr. White was trying to stop our men from going into Opposition room. I saw no other difficulty there. This was about an hour and a half

before the disturbance at the polling booth. It was about four o'clock when I left White's house and heard of the row. I met Carrol, who said George Gray had struck him and cut his face. I said, where are they? He replied, they have gone up the road. I saw three or four men coming up the road. I then saw men coming from Kenty's. I didn't see the guns with them the first time. I didn't see the guns at all until I heard the first shot. I can't say who fired the first shot. I brought a stick from the house with me; I had it at White's house. I couldn't see any other sticks there. I had it concealed under White's house. It was an oaken stick. I didn't take the stick until I saw how the thing was. John Reeves and I tried to keep peace. From the time I left White's until I got at the polling place I saw no fight on the road. I saw Reeves there; he didn't look as if he had been in a fight. Gray had blood on his mouth, and he told me John Carrol had struck him. There could not have been any other fight there without my knowledge. James Sullivan, who was very groggy, went up before me. Hurley was not there when I went up; he came up after me. I called upon Michael Kearney to come up after me; he was the only person I called upon to follow. I said, "Mick, come along with me, and I will send them home if I can." I didn't think there would be a row then. I wasn't afraid of any person being killed. Our men were groggy; I don't think the Opposition men were. There were about 15 or 16 men there with guns. I did not count them. When our party came too handy to the Opposition party, they told us to keep back. The Opposition were not advancing—they were standing. The first gun had been discharged before I got there. The guns were not presented when I first went up. I had hold of David King's gun; he didn't give it up. King said he didn't intend to do any harm; he didn't want to come, but was forced to do so. By this time our party mustered eight or nine. I dare say a greater part of our people were on the road coming up at that time. They had no sticks. The only stick I saw there on that day was my own. I didn't see any of our men with stones. I didn't see any stones in Hurley's hands. When our party halted, they were within five or six yards of the Opposition party. Some of our men were groggy, and wouldn't keep back. I saw Dennis Ring there; I also saw McDonald, Martin Smith, and J. O'Donnell there. The men with guns didn't retire back—they held their ground. Preeper was standing on the logs. I went in between the two Opposition ranks; it was then when I first saw Preeper on the logs. I do not think I put my hands on any man in the rear rank. The front rank men were very much excited. (The witness refused to state what he did; the Court said he must answer.) John Reeves turned traitor, and I up with my stick and knocked him down. I struck him on the back of the head. I then knocked down two others. I do not know who they were. When I got three or four down, I made a rush at Preeper; I slipped, and he wheeled round on the log. Preeper was on the Lake side. When I got up, the rear rank were gone; the front rank men were there, but their guns were pretty much taken away from them by our party. Our party was too strong for them. When I fell, the gun had not been discharged; there was one gun

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taken that was afterwards discharged at White's house. There was only one whole gun left; the others were broken. As soon as I got up I followed after Preeper; I don't know whether Preeper took the gun away with him. I don't know whether Preeper received any blow. When I made at him it tipped him on the back of the head. If I had made a good mark the man would not have been shot. When I turned upon Preeper, he turned sideways, and I hit him on the collar; if it had taken him on the head it would have brought him down. While I was chasing Preeper I heard that Hurley was dead. The Kentys had left on my return. Reeves was still lying there pretty much over blood. David King was also down, and another man whose name I don't know; they were Opposition men. When our party found Hurley was dead, they turned round on Reeves, King, and the other man, who were lying down, and beat them more. There were four more of them down; some of our side wanted to kill them, and others would not let them. King was not struck down by me. Some of them were taken prisoners by our party. I caught one of the Opposition party in the woods and made him prisoner; he was hid under a log. I assisted in making Reeves prisoner; I dragged Reeves by the hair down the steps of the house to the car. I was told the evening before the election to be prepared to defend ourselves at the election. Barney Deegan told me the other side would be armed with guns.

The Court adjourned, and resumed at half-past two o'clock.

JOHN SKERRY, Esq. Was at polling-place No. 18, for eastern district of Halifax, at last elections; was sheriff's officer. A little over 200 votes were polled. Things went on quietly until about half-past two, when a riot occurred about 300 yards from the polling-place. I was inside; heard the report of several guns; a man came in and said a person was shot. I swore in seven or eight special constables, who brought in two persons injured; knew one, named Reeves. Guns were brought in. Some parties rushed in and attempted to beat the men brought in; they were prevented; they then beat Mr. Stephen; I got knocked about pretty well myself. I got the poll-book and left; on my return all the guns had disappeared; a few persons were about the polling-place. I went up in the room where Mr. Stephen was, and made a note of the hour when the riot occurred. No man had been prevented from polling; all had free access to the poll up to that time.

Cross-examined by Mr. Young. My attention was not attracted by any row before the shots. The house was on the opposite side of the street. The men were much beaten: they were brought in by the constables; a number of men were inside who wished to beat them; I prevented them. Mr. Stephen represented the Opposition; Paul Farrel and Captain Mitchell represented the Government candidates. Mr. Stevens was perfectly quiet; did nothing to create disturbance except swearing persons during the day. Stephen was carried into the house by Mitchell. I closed the poll after the row. I think I heard three or four shots. There were nine or ten guns twisted and broken. I recollect swearing Captain Mitchell and Mr. Gauld. It was about half-past two when I heard the guns. I went up in the train the evening previous. I saw a few sticks, but nothing to create fear of a row.

DENNIS RING *sworn*. Saw Hurley when he was shot. I suppose George Preeper shot him. I went to polling-place between nine and ten in the morning, and continued there. Gilfoy and Rutherford had some quarreling outside the polling-place. I saw a number of persons leave polling-place and go towards Kenty's. They returned back with guns. This was the first time I saw fire-arms. I heard a shot go off. I heard them shouting for party near polling-place to come on. They were advancing towards the polling-place. Some of our party went up towards them; they had no arms. I followed up. The parties met each other; saw them taking guns away and breaking them. I saw Hurley—he was ahead of me; he made a rush at Preeper to take the gun away from him. Preeper jumped up on mill logs at the side of the road. Hurley was pressing forward to take the gun from him, when he discharged the gun at him. Preeper stumbled into the brook, and lost his hat there. He then went in the direction of the woods, and took his gun with him; it was a double-barreled gun. Hurley lived about five minutes after the shot was fired. Didn't hear Preeper say anything. I heard one shot fired before the parties met; wouldn't swear by whom it was fired. I couldn't say who had guns except Preeper. I afterwards saw six or seven gun-barrels at polling-place. I saw one of the guns discharged after the disturbance. John Kenty, James Kenty, John Lane and Charles Miller were in the party with Preeper. I can't say who had guns. I saw Brian Kennedy running up; he was engaged taking guns away from some of the party.

Cross-examined by Mr. McCully. I live about two miles this side of polling-place; I was born there. I did not vote that day; I tried to vote, but they said I was too young; I intended to vote for Gladwin and Falconer. I saw Thomas Gilfoy attack Mr. Rutherford. I was not in the Opposition room that day. When I first saw Preeper's party they had proceeded about 200 yards from White's hotel; they were going homeward, and pretty nearly all together. I must have been inside the hotel when they started. I saw a lot of people in a bunch, as if a row had been going on. I saw George Gray and old Mr. Reeves through the day. I saw Thomas Lowry going off the road; couldn't say there was anybody after him; may be there were persons going after him. I don't know any of the persons who were chasing Lowry. When I saw the persons with guns, they were half-way between the polling-place and Kenty's—about 50 yards from where Lowry was. I saw persons with walking-sticks: Mulligan had a walking-stick; my father, Dennis Ring, had a walking-stick; Brian Kennedy had a stick. I did not see any stones thrown that day. There might have been about 15 or 20 there when I first came up. Our party outnumbered theirs. Our party still kept running up. The other party cried out, Come on, you b——rs. This was said before the parties met. I heard them sing out to our party to keep back. I didn't see Kennedy until after the man was shot. I didn't see anybody knocked down. The guns were pretty well taken from them and broken before Hurley was shot. Preeper was on the western side of the road. The first thing I saw when I came up was the man fall. I saw Preeper as I was

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coming up. There was nobody near Preeper at the time except Hurley. Hurley was chasing Preeper, who jumped up on the log. I saw the gun before; I knew it by the brass on the stock. I was examined twice before the Grand Jury. I was examined on the coroner's inquest. I didn't hear any words pass between Preeper and Hurley. I saw Hurley in the act of catching the gun. I have never said on any occasion that I didn't know that Preeper shot Hurley; I never said so to John Preeper. I remember having a conversation with John Preeper on the subject. I saw John Reeves on the ground. I saw John Lane lying under a log; Martin Smith went into the bushes and got him out. I did not see anybody beating Reeves. I saw him brought into polling-place; he was cut and bleeding a good deal. Preeper was pretty handy to the logs when I first saw him; I did not see him cross the road. About a minute or two elapsed from the time I first saw Preeper until the gun went off. I was examined on the coroner's jury; it was taken down, read to me, and signed. I put my mark to it. [Witness's evidence given before the coroner's jury was produced and read to witness, in which it appears he stated as follows:—"Preeper retreated across the road, apparently for the purpose of going into the woods; Hurley pursued him, and almost had his hands on Preeper's gun when the latter fired the gun."] Witness continued—Preeper did not run across the road.

WILLIAM KELLY sworn. I left polling-place about two o'clock or a little after. I met Preeper about quarter of a mile this side of polling-place; was carrying a double-barreled gun on his shoulder, without any hat on. I asked him how he came to be there without his hat; he said he left his hat behind him in a shower of stones. He said there had been a row, and he had done his share, and if others had done the same he guessed there wouldn't have been such a row. Preeper was with him.

Cross-examined by Mr. McCully. I voted for Falconer and Gladwin. I had Prentice and another man with me. When I met Preeper I understood he was in a row. I did not live at Grand Lake at time of election; I was employed by Government on the road; had charge of a piece of road under Mr. Feetham; I am still in Government employ. I spent all that day in the election; the Government paid me for that day's work; I got 6s. 3d. for that day. I saw no fight on that day. I saw Reeves after the row; they had him standing up. I saw some kind of a scuffle when they were beating Stephen; he was not badly beaten—he was able to run. I saw him struck with fists.

BERNARD DEEGAN sworn. Was at Shultz's on day of election. I am section master on the railway. There was a slight disturbance about ten o'clock between Gilfoy and Rutherford. About two o'clock heard words between Hurley, Gray, and Carrol; Gray and Preeper had their heads out of White's window; Carrol and Hurley were on the road; both parties used abusive words; Gray said he would mark Hurley, and the latter said if he was outside he would not do it; didn't hear Preeper say anything. Mr. Skerry requested me to quiet them, but they did not mind me. Saw Hurley and Carrol go round and go up White's steps; about 8 or 10 minutes after-

wards I saw a body of men go out of White's back door and go up the road ; I thought they were going away ; I recognised James and John Kenty, and George Gray—I think prisoner was there—in all about ten or twelve. A young man named Ring came to vote ; I invited him to take beer ; we went to White's, and while in the act of filling glasses, a young man named Washington ran in and said, "They are coming down the road with guns ; men, turn out." I requested Benjamin Doull to make peace, as their party had guns. I heard guns discharged ; I saw men with guns—can't tell how many ; I was 200 yards off ; they were near Kenty's mill, which was destroyed by fire the day before. I saw the party with guns coming down towards White's ; I could not identify any of the persons. After the discharge, James Kenty came down the bank and said, "I am clear ;" I don't know what he meant. I was told by Messrs. Smith and Wells that John Kenty was shot. While in conversation with Mrs. Kenty, I met prisoner ; he had a gun ; I asked him if his name was George Preeper ; he said it was. I asked him what induced him to bring a gun there ; he said he was advised to do so.

Cross-examined by Mr. Young. I was there about ten o'clock in the morning. I voted for Falconer and Gladwin. I saw no violence. The expression Kenty made use of to me when he came down the bank was, "I am safe." There was a fight and confusion as soon as the Government party went up. I asked him his name, because his head was bare and wet, and I didn't recognise him. The day before, Mr. Feetham sent me a note to let the men go to the election. The men and myself got paid for that day. I saw neither sticks nor stones in the hands of the Government party. I saw neither Lowry, Gray, nor Reeves knocked down.

[The Court adjourned at 5 o'clock. The Judge stated that he could not allow the jury to separate for the night.]

SECOND DAY.

SATURDAY, NOV. 19.

MR. JUSTICE WILKINS.—I am sorry, gentlemen, that the requirements of the law render it necessary that you should be confined during the continuance of this trial ; but I feel it necessary that it should be so.

CHARLES C. TROPOLET, Foreman.—The jury are desirous of performing their duty to the letter, but they wish, through me, to ask whether, if the case extend over Sunday, the jury will be permitted to return to their homes, under an obligation not to communicate with any person.

MR. JUSTICE WILKINS.—The law must be respected, gentlemen. I have no desire to confine you, and will look into the subject and answer your question.

THE FOREMAN.—I am afraid, my Lord, that we will not be able to hold out,—but few of the jury obtained rest last night.

MR. JUSTICE WILKINS.—That may be obviated by counsel confining them-

selves to questions pertinent to the issue, in which event the day would be sufficient to finish the case.

Some conversation ensued with respect to the relevancy of questions.

MR. YOUNG proposed to cite a case bearing upon the question of confinement of the jury.

MR. JUSTICE WILKINS.—I have looked into the questions thoroughly, and made up my mind on the point. Even if the discretion were vested in me to allow the jurors to return home, I should not exercise it in a case like this.

JAMES SUTHERLAND *sworn*.—Was at District No. 18 on day of election ; I was there from commencement. The election was very orderly until about mid-day. I heard angry words spoken. The first I saw after dinner was the deceased, and Carrol, and Gray, and prisoner, quarrelling. Gray called Hurley a d—— Catholic son of a b——, and wanted to fight. Carrol and Hurley said, come out of the house and we will fight ; afterwards saw Carrol and deceased go up White's stairs. After this, on looking out of polling-booth, I heard them say the men had guns ; I looked out and saw some eight or nine men with guns. I saw one shot fired immediately after I went out—it appeared to have been fired in the air. I heard at least four discharges. A few of the government men had sticks. I took them from them in the morning and threw them away. I remember Bryan Kennedy having a stick—I wanted to get it from him but he refused. I didn't see a man on the occasion with a stick in his hand ; saw one of the liberal party put stones into his pocket. I did not know the prisoner at the bar on that day.

Cross-examined by Mr. McCully.—I am son of old Mr Sutherland—clerk in his employ. Had been overlooking men at the time of the election ; my father had from thirty to fifty men ; there was not more than half of them at the election. I suppose some of the men with sticks came from our work ; I suppose I disarmed two or three ; I suppose they were beech sticks ; they were good heavy walking-sticks ; I considered them dangerous weapons. The polling place is directly opposite White's hotel. The liberal party had a room by themselves there that day ; I was in it in the morning ; it was full. The government party had not the bar-room that day ; the bar-room was occupied by both parties that day ; I was in it on two occasions. The parties in the room were about equally divided ; I didn't know all that belonged to the liberal party. When Carrol and Hurley went into the house, seven or eight of the liberal party left the house immediately after ; they came towards Halifax ; they had no guns. I did not see the government party pursue them ; they might ; I heard angry words pass between them. I saw Carrol after Hurley was killed. I didn't see any fighting there that day. The votes polled were seventy-eight for the liberal party and over two hundred for the government. I remember two shots being fired, as if two barrels had been discharged at one time. I saw Bryan Kennedy putting his stick into the porch of the hotel. I saw an old man very much beaten ; I couldn't tell the color of his hair, it was so covered with blood. I knew Hurley for two or three years.

I don't know that the gun was taken from the liberal party; it was told so to me.

WILLIAM MACKINTOSH sworn.—Went to Schultz's on the day of election at eleven o'clock, and remained there until two or half-past two o'clock. I saw no disturbance until on my way home. I saw two guns discharged; it came in the direction of the mill. I said to the party who were with me, hold on, there are the guns now. When the shots were fired the men ran up against them. I can't say who fired the shot that killed Hurley. I saw the man that was shot moving leisurely along, and another at the end of the log. The man who fired had one foot on the mill-log. The man elevated the gun; I saw him from the field on the hill; there was not more than thirty feet distance between the party with the gun and the deceased. The government party were not armed; both parties were civil.

Cross-examined by Mr. McCully.—I stay on the Guysborough road. I voted for Falconer and Gladwin. The first two shots I heard went pop-pop! From where I was standing I was in a position to see how far the deceased and the man with the gun were apart. I didn't see any sticks that day. I saw one old man with a staff. I heard it talked of in the neighborhood, before the election, that there would be a row.

MARTIN SMITH sworn.—Was at election; there pretty much all day. I heard two shots fired; came out of White's house and saw men with guns on Kenty's road; John Reeves, Alexander Taylor, John Lane, and Peter Spriggs had guns. Mr. Doull and I went up the road and met Britton on the way; at this time there was no fighting; our object in going forward was to induce the men to put down the guns. I came up in front of Bryan Kennedy; I went right up to them and advised them to put down the guns; they said if I didn't go back they would shoot me; Alexander Taylor was one of them. I can't say who fired the two guns. They pointed the guns towards us but didn't fire. Preeper was there with a double-barrelled gun; Preeper is accustomed to the use of a gun; I have been with him hunting. When Bryan Kennedy came he did not say much to them, but struck at them with a stick; the row then commenced. After two or three of them had been knocked down, the men with guns retreated and faced again. The government party twisted the guns from them and tried to beat them with them. The men were knocked down before Hurley was shot. Hurley came up after Bryan Kennedy; Preeper was facing Hurley; saw deceased with his hands up as if he wanted to take the gun; the men were close up together; I was six or eight yards from Hurley. Britton took Taylor's gun and hit him with it, and then got another, and held them both. Two men came up with stones in their hands and were going to hit Britton; they thought he belonged to the opposite party, because he had the guns; I said are you going to strike one of your own party? they said "is he." I can't say Preeper shot the man; he held the gun low down; I saw the smoke after the report; saw Preeper run across the brook; Mr. Doull fired a stone after Preeper. I didn't know the position of the gun, but Preeper's hands were down when the shot went off.

Cross-examined by Mr. McCully.—White's were all tys are warned Reeves down J lor down fury, and the down the knoeke ter Ke knoeke just at back a standing and ad them w with hi were de Preeper with a shot ve about h ermme **Ree-** There **Jude** impress didn't fect of to mult The **JAM** was go guns. all in They v Dennis and be keep b put hin the sid coming were p

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Cross-examined by Mr. Young.—I was not there when the men left White's, and therefore can't say what induced them to bring the guns. They were all peaceable and respectable farmers in the neighborhood. The Kentys are very decent men. I think their intention was to keep us off; they warned us not to approach. Bryan Kennedy struck the first blow. John Reeves, Alexander Taylor, and Lane were knocked down; Kennedy struck down John Reeves; he is an old man; McDoull and Britton knocked Taylor down. I saw Kennedy striking amongst the crowd; he cracked on like fury, and some of them went down. Taylor swore he would shoot Britton, and then McDoull knocked him down. At the time the men were knocked down there was only four or five of the government party. After Taylor was knocked down Britton took his gun and gave him a clip over the head. After Kennedy struck the blow, and after Taylor, Lane, and Reeves were knocked down, Preeper and his party retired back three or four rods. It was just at this time the two men came up with stones. Preeper's party wheeled back again, and by this time they were all huddled together. Preeper was standing on the road, alongside of a mill-log. Hurley must have passed me and advanced towards Preeper. The men were not all together; some of them were a little further up the road. Hurley advanced towards Preeper with his right hand up; I can't say what his intention was. Preeper's hands were down; they were lower than the other man's. I will not swear that Preeper shot the man. When Preeper crossed the brook McDoull struck him with a rock. I didn't see Kennedy strike Preeper. I saw Reeves after the shot very much beaten. I brought Lane out of the woods; he had blood about him. Alex. Taylor had a bad cut in his head. I voted on the government ticket.

Re-examined.—Saw Hurley after he was shot; the ball entered his neck. There was only one report of a gun when the man fell.

JUDGE WILKINS stated to the Attorney General that if the last witness' impressions are substantially correct, and not hereafter to be contradicted, he didn't think any witnesses the crown would produce would vary the legal effect of the case on the part of the crown, and suggested this with a view not to multiply testimony.

The Attorney General said he felt the force of the suggestion.

JAMES McDOULL.—Saw fight at Election. Was told in White's a row was going to commence; came out; and saw men rush towards Kentys with guns. They numbered about fifteen or eighteen. They were pretty much all in a line. I recognized Alexander Taylor, John Reeves, and Preeper. They were standing. About three or four of us went up—Martin Smith, Dennis Ring, and myself. I had nothing in my hand. I approached Taylor and begged him not to make a row; he cursed, and swore that if we didn't keep back he would blow our brains out. I put my foot behind Taylor, and put him down gently. Saw Preeper with a gun in his hand; he came out by the side of the road; he faced towards the crowd; the rest of our party were coming up. They retreated and turned round again, and some of their guns were presented. I believe Hurley was anxious to catch the gun from Preeper

when the latter fired. Hurley was running hard; I think he raised his hand. Preeper was holding the gun down until Hurley came up, when he raised the gun to his shoulder and fired. I didn't hear a word exchanged between them. Preeper fired and retreated. I took up a few stones and followed him. He lost his hat in the brook. The Government party was not armed. Kennedy had a stick. I only heard one gun discharged the whole time.

Cross-examined by W. Q. Sawers.—Live on Guysboro' road. I worked on railroad four years ago. The election was going on when I arrived there. I voted for Falconer and Gladwin. I was in White's house. The riot was the first disturbance during the whole of the day. When I was in conversation with Taylor our men came running up. Didn't see anybody there with stones. I didn't pick up the stones until Preeper fired. I had'n't stones in my hand when Britton had the guns. When we attacked Alexander Taylor first the men fell back. When Hurley went towards Preeper he went back a little. I clinched a gun from a man there; I couldn't say he was doing anything offensive; he struggled; I didn't strike him; I knocked him down and broke the gun; kept the barrel and fought my way the best way I could. Some were forced to go away; we followed them; they took into the woods on each side of the road. I saw Stephen beaten; I didn't strike Stephen because I was sworn in as one of the special constables to keep the peace.

CAIN MAHANEY.—I saw men coming down armed; heard the shot, and subsequently saw Hurley shot. It was sometime after dinner that I first heard of any disturbance. Up to that time all was peaceable. I saw a disturbance before—Lowry and a man after him.

Cross-examined by Mr. Young.—Am contractor under Government for getting out stone. I employ about thirty men and pay them. I took an active part so far as getting as many votes polled for the Government as I could. None of the men employed by me had sticks. I saw no sticks but one with an old man. I neither saw nor had a pistol. Saw a party of men leave White's house and go on towards Halifax. A row occurred; Lowry was knocked down; I tripped him; he fell over the bank; as far as I could see nobody else did touch him. I tripped him because I saw him running away and a man after him, and I thought I'd trip him up. I had no stick or stone that day. I was in the room that was used by the Opposition side. There was a room set apart for the Liberals and one for Government. The Liberals had the south room. I went in the front door and went through the hall, (the witness here contradicts his statement that he was in the Opposition room.) After Gray fired the first shot I went away. Gray put the gun to his side and fired at random. I heard only two shots that day. Gray was not more than 150 yards from me; he was nearer the polling place than Kenty's house. I saw no men cross the road with guns. While advancing towards the polling place the first shot was fired by the Opposition party; they came to a stand still on the road. It was before this that the shot was fired. I saw no persons advancing towards them with sticks or stones. I saw three men without sticks or stones. I saw Stephen beaten; I only saw one man strike him. I had a contract to fill up the cove at Grand Lake. I conducted

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GEORGE MITCHELL.—I was inspector at polling place eighteen, spoken of. Nothing occurred previous to the firing of guns, to create disturbance. Mr. Stephen had a pistol; he represented Mr. Esson. After the guns were fired two or three men came into the booth very much bruised; one was a white-headed old man, the other about forty years of age. I saw a gun and fired it into the lake—from the disturbance in the water I concluded that it was loaded with slugs and shot. I saw no riot; to the best of my knowledge all was quiet before the firing.

Cross-examined by Mr. McCully.—Was at election as inspector for Falconer; I voted for Gladwin and Falconer. Did not see the party with guns until after the shot was fired. Heard no quarrel. Was not up the road until after the shots were fired and the man killed. Saw a pistol picked up in the house; Mr. Stephen admitted it to be his. I saw no one strike him, but could see that he had been struck. I was struck; no blood was drawn. Stephen was a mass of bruises. Don't know whether the men brought into the polling place belonged to the Government side or not. I saw an old man brought in.

JOHN SHERIDAN.—Was at the election at Grand Lake. Saw a small scrimmage nearly in front of the polling place, about two o'clock. George Gray put his head out of the window and shook his fist at Hurley, and told him he would trim or dress him before he went home. Saw Sprigs pick up a stone. We went round the house to go in the back way. Hurley and Carrol were under the window on the road. A few minutes after, fifteen or twenty men—Gray, Peveril, Preeper and others—came out. No row occurred on the road before; there were some clips and clouts, but Preeper's party ran toward Kenty's. I have often seen as much disturbance in the streets of Halifax. Shortly after, these men returned with guns. Hurley, Carroll, and others were wandering about mixing with each other. The whole distance from the polling-booth to Kenty's is about 300 yards; they returned about half way. I saw Taylor flourish a gun and challenge the others to come on. Twelve or fifteen had fire-arms. I did not approach any nearer. Preeper was one of those who left and went towards Kenty's. I was chiefly inside the booth; saw no sticks or other weapons.

Cross-examined by Mr. McCully.—Live on the old Truro road. Voted for Gladwin and Falconer. I saw in the *Morning Chronicle* that it was stated that it was proposed at a meeting in Halifax where Mr. Jennings was president that fire-arms should be used. I heard some ill language pass between Rutherford and Gilfoy. Hurley and Carroll remained on the road. I was not in the room of the Liberal party that day. I did not hear the party who came out calling to each other to go home. I did not see Kenty, Taylor, Lowry or Rutherford come out; when they got cleverly out on the road the scuffle took place; I did not see any man of the Liberal party down; I did not hear the cry of murder; I did not see Peter Spriggs after he picked up the stone; it might have been a handful of gravel.

THOMAS GAULL.—Was not present when Hurley was killed; saw men

about 200 yards distant standing on the road. I knew none of the men who had the guns. As far as I saw, the election was all managed very quietly; saw no sticks or stones.

Cross-examined by Mr. Young.—Was at the election. I am station-master there. Voted for Falconer and Gladwin. I asked Mr. Stephen to interfere to take the guns away from the men; he did not do so. I continued there until some time after. I saw Gilfoy about a quarter of a mile from the polling-place with a stick in his hand. I was not in the Opposition room that day. I saw no scuffle or fight—no man knocked down before the guns were brought.

JOHN SLAYTER, Esq., M. D.—I examined the body of Patrick Hurley. There was a wound in front of the neck on the left side of the wind-pipe; there was another wound behind the left shoulder. The first rib was broken; the main arteries of the neck were severed. The wound was by a gun-shot. He died from loss of blood occasioned by the wound. The ball had entered the neck and went out at the shoulder; it descended downwards. The bullet had passed through his body. The rib was fractured by the bullet. The usual charge of powder would be sufficient to drive the bullet through the body.

Cross-examined by Mr. McCully.—Blood was escaping from the wound when I examined it. The skin was scorched. I took a piece of wad out of the wound about an inch. Hurley was under six feet in height—about the medium height. Hurley must have been below the person who fired; the gun must have been depressed.

The case for the Crown here closed.

Hon. Mr. McCULLY opened the defence. He said:—It becomes my duty, gentlemen, as counsel for the prisoner at the bar, at this stage of the proceedings, to ask your careful attention to the evidence which we shall produce in his behalf. This I shall do as succinctly and with as much brevity as the nature of the case will admit. Perhaps I ought to say to you, gentlemen, that Mr. Preeper, strictly speaking, is not my client; I was one of counsel for the Kentys, against whom no bill has been found, and the opening of this defence should have come from my learned friend Judge Sawers, who has known the family of the prisoner intimately for many years. His state of health, among other considerations, however, prevents him, and the duty in consequence devolves upon me. There is another reason why I have assumed this office. The case is one necessarily of a political character. The whole difficulty arose between two political parties. A riot occurred, serious injuries were inflicted, and one man's life was lost. Being emphatically, as I have said, a political case, in that aspect, had his health been otherwise, my learned friend, in the exercise of a wise discretion, might not possibly have eagerly sought to assume the position I now occupy.

With these preliminary remarks, I shall now detail to you, gentlemen, with some generality, the outlines of the defence which we propose to set up, and, if not entirely misinstructed, I may venture to predict that you will find,

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before the evidence for the prisoner is exhausted, that the case for the Crown presents a very, very meagre and imperfect sketch of the transactions which took place at polling-district No. 18, on the 12th of May. It is matter of utter astonishment to me how the witnesses for the Crown, who pretend to have been present during the occurrences which led to the death of Hurley, should have given you such a one-sided version—should have seen all that militated against the prisoner, and been blind to everything that operated in his favor. Preeper stands here indicted for manslaughter. He, with the Kentys, has already lain five or six months in jail, not on this, but on another charge of a much more serious nature, which the Grand Jury refused to countenance. But he has now to meet the indictment as it stands, and, in my judgment, he will be able to do so successfully.

It will be shown to you, gentlemen, that great and good reasons existed for apprehending that if, on the memorable 12th of May last, any elector dared to present himself at Shultz's Inn to vote for Messrs. Esson and Annand, the Opposition Candidates, he would do so at the peril of his life. It had been intimated, the rumor was prevalent, that they who were going there on that errand had "better take their coffins with them." The whole country side, gentlemen, was in a most disturbed and unsettled condition for many days previously, as we shall show you, and a state of things existed, rarely if ever known in this peaceful country. You will find that on the morning of that day, Mr. Mosse and, I think, Mr. Scott, left Halifax in the cars on their way to Shultz's—that from the time they left Richmond Station until they arrived on the ground, these gentlemen were busily employed in collecting together as large a number of railway navvies as possible. That these men came there armed with sticks and small crowbars,—that so great were the apprehensions of mischief about to be perpetrated, that some who went up in the cars seriously contemplated returning forthwith to the city. That on their arrival at the polling place, these sticks, with pick-handles, crowbars, and other weapons, were piled away for use. It will be found that the parties occupied different rooms at Shultz's, now White's Hotel—that the supporters of the Opposition remained in their own room, peaceably and quietly attending to their duties, and in the same manner exercising their franchise. That on the contrary, the supporters of the Government, in the early morning of that day, obtruded themselves unbidden and uninvited into the room occupied by the Opposition party. That they then deliberately insulted the supporters of the Opposition Candidates in their own room; broke a tumbler in one man's face, threw their liquor out on the floor, wasted their provisions, did everything they could to provoke a quarrel, and that the assistance of Mr. White and his staff had, on more than one occasion, to be called in for the purpose of preserving peace and compelling these lawless intruders to withdraw.

We shall show you that a man named Gilfoy, early in the day, seized old Mr. Rutherford by the throat and attempted to choke him; and that another peaceable and inoffensive man who was quietly seated upon a log, was kicked by this same Gilfoy and driven off. In fact, gentlemen, we shall show to you a series of aggressions antecedent to the riot, outrageous beyond human endu-

ance. The supporters of the Opposition, who were principally the inhabitants of the neighborhood, saw that some terrible mischief was designed and was about to be perpetrated, and they therefore decided to leave Shultz's Inn and retire to their homes. Accordingly they called their friends together about 2 o'clock, announced their determination to leave, and did leave accordingly. They had proceeded but a few yards, however, when they were set upon by an overwhelming body of these infuriated, ungovernable men, who knocked some of them down, beat them, jumped upon and treated them like dogs. Two or three of those knocked down were held, and the remainder fled up the road to Kentys, hotly pursued by the Government party. There they got guns, and came back a part of the way in order to rescue those they had left behind. They found their friends, or such as had escaped, and then they came to a stand still, when the Government party, in increased numbers, rushed upon them, and a second bloody assault was made. During this second attack, a number of the opposition party were knocked down, beaten, bruised, and very seriously injured.

Now, gentlemen, that Hurley was shot cannot be questioned. It is a melancholy fact that a life was lost. But even if Preeper was the man who discharged the gun, I think you will come to the conclusion, after a thorough investigation, that he is not guilty of manslaughter, but of excusable homicide only. The principle being too clear to be questioned, that a man whose life is put in jeopardy by the unlawful act of another, is justified in taking the life of that other, rather than lose his own. If there is one right more dear, more sacred to Englishmen than another, it is that dear bought privilege which secures the freedom of election. If the constitution of the country protects you, gentlemen, and his Lordship, in the administration of law, with a still more sacred regard it protects electors in exercising their franchise in the selection of the men of their choice to assist in making the laws you are to administer. Those men who have so wantonly provoked this quarrel seem to know and care nothing for law or order. They appreciate not the value of the constitution under which they live. This is not the first of a series of acts of outrage perpetrated by them, and the only wonder is, how the native population have borne so patiently the wrongs and the insults from time to time heaped upon them.

In my judgment, gentlemen, it is not George Preeper who should stand at that bar, but they who, without provocation, unnecessarily and brutally insulted and injured a number of unoffending men in the Queen's peace. It is not my intention to comment upon the testimony given on the part of the crown—it is not my privilege to do so at present, but I ask you to regard it with great deliberation, caution and distrust; to recollect the source from whence it is derived; to remember that the men who gave it were the instigators of the very riot that led to Hurley's death; the perpetrators of these brutal assaults to which I have alluded are all supporters of the government candidates. The guns with which the supporters of the opposition armed themselves, I must tell you, gentlemen, were taken—not for the purpose of assaulting their opponents, as is evident from their having been left a quar-

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ter of a mile from the polling place, but for the protection of themselves from threatened injury on their return home; and the right to arm for self protection, while danger to life or property be reasonably apprehended, belongs to every individual member of society. My learned friend Mr. Young, who is with us in this case, will, on the close, go fully into the facts, commenting on the whole case, and I shall therefore not occupy more of your valuable time, or trouble you further at present, but proceed to call the defendant's witnesses.

GRACE CHANDLER.—I live at Grand Lake; have done so for eight months; live about ten yards from White's; was there at the time of the election; my husband was assisting Mr. White at the hotel; I recollect the noise and riot; no one was in the house at the time but myself and two little children. The first thing that frightened me was seeing men with guns; I was looking out the window; they came from the direction of Kenty's house; I saw three men with guns opposite my house, which faces towards the lake; there was a good deal of noise; further up towards Kenty's a fight was going on. I saw men pointing guns at other men, and telling them to keep back; they would not. I saw one man point his gun towards the feet of Hurley, but there did not seem to be anything but powder in it. Hurley picked up two rocks, one in each hand; they then told him to go back, and pointed their guns at him; I saw one man with his finger as if he was going to pull the trigger, so I drew back and dropped the blind. I heard a shot; about a minute after I lifted the blind and saw the man shot running towards the other men; he fell down on some planks about twelve or thirteen yards from where he was shot; he got up again, ran some twelve or thirteen yards further, and then fell dead. There was a very great noise—a noise from the men who were getting beat—moaning and groaning. I saw the man removed away; he laid several minutes before he was picked up. I saw people beating an old grey-headed man.

Cross-examined by Mr. Johnston.—Went to live at Grand Lake on the last day of April last. My husband was coachman to Mr. Henry Boggs before he left the city; he is now farmer's man to Mr. White. My house is nearly opposite Kenty's mill; the mill was burned in May last; my house was only three or four yards from the mill-stream; the brook runs across the road; I saw men running past the house; I did not know them; there was a large crowd, more than thirty; they ran pretty much up to the mill bridge; they met the men with their guns. The number of men who first went up and came back with guns—there were twenty or thirty, if not more; some of these went out of sight; the guns appeared in a few minutes after they passed the house; I saw no more than three men with guns; I don't know where the guns came from; some of those who passed the house came back again with guns; I only saw three. The men who came down with guns, came down abreast of my window; the three men lined the road. When the men first passed up the others followed, just as if they were chasing one another. I can't say where the three men with guns had gone through the crowd which was fighting. The man nearest to the house was about three steps from my

house; the other two close alongside. Hurley was by himself; none with him. The planks were only a few steps from my house, alongside the mill. Dennis Ring was there when the man fell upon the planks; he laid there four or five minutes. I can't tell who the men were that fired the guns. I came into town this morning with Mr. White.

The court adjourned.

THIRD DAY.

MONDAY, NOV. 21.

PHILIP BROWN.—I am stationed at Grand Lake; am agent for the Inland Navigation Company. On 12th May I left Fletcher's in the ten o'clock train and arrived about five minutes after ten. The polling had commenced. I went to see teamsters whom I was to meet; I was there until between twelve and one o'clock. I got my teamsters, Henry McDonnell and Martin Smith, and sat down on a log; while sitting there two men came up behind me, struck me, knocked me down, and gave me a kick on the backside; they were Gosson and Gilfoy; they were of the government party. I picked up a stone and asked them what they meant by striking an old man like me. They called me a d—d old son-of-a-b—h. These two men seized Archibald Rutherford by the throat and attempted to choke him; he cried out you are choking me. Some parties came up and released him. These men were going about evidently striving to kick up a row. Michael Ryan had asked me who I was going to vote for; I said I was not going to vote at all; he said "In God's name you had better not, for if you do you had better prepare your coffin." Michael Ryan was a section master. These same two men attacked me again. Both places of entertainment were in same house; I went into both rooms, took a glass of beer in each; saw the government party attempt to force their way into the room of the opposition. A barricade had to be erected, and Mr. White was called up to prevent their going in; some of them did go in. The opposition party behaved in a very orderly manner; all the skuffling was on the part of the government party.

ARCHIBALD RUTHERFORD.—I voted at the election of 12th May. I was assaulted about ten o'clock at the hustings by Gilfoy. I did not see him; he seized me by the throat; I shoved him out of doors; two others then attacked me; I was rescued by some other parties; I don't know who. At a later part of the day I was assaulted in the refreshment room by the same man. I was peaceably in my own room; Gilfoy came up with a number of others; he said "There is the b—r now." Some of his party were in the room, some in the hall. Gilfoy struck a tumbler in my face and cut me; he intended to injure me severely but missed his aim. I did not leave until after the man was shot. All our party had left their waggons at John Kenty's barn. I am a farmer, living on the Guysborough road.

Cross-examined by Mr. Johnston.—I keep Pollock's house. I went up with Mr. John Reeves. They were taking votes when I got there. When Hurley was killed I was in the long stable; had been there almost an hour;

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went in there to save my life; continued there till a man told me I had a chance to start. I left pretty soon after Hurley's death. Had no gun with me; did not know that guns were to be there Wednesday; saw no guns. I did not learn this from Preeper. Preeper came down with me the night before; no mention was made of guns. Had not been at Kenty's after I left in the morning until I went home; Reeves, Henneson and others were there. I think Preeper stayed at Mr. Taylor's the night before the election. I heard no talk of guns at the time of the election. My son came along after the death of Hurley, and told me that now was my chance to escape. The long barn is situated nearer Halifax, say by twenty rods, than the house; I should think that it is four hundred yards at least from Kenty's.

Thomas Lowry.—I was at the Grand Lake at the election in May; voted for Esson and Annand; had been living there for two years. I went there a little while after the polling began; Cain Mahoney struck me; I was standing at back of crowd; he walked round the crowd, came up behind me, seized me by the shirt, and struck me across the face. I told him I did not wish to have anything more of that kind; he then walked away; this was about nine o'clock. I saw Gilfoy have hold of Rutherford; he was trying to choke him; he would have been choked had it not been for myself and others. There was a crowd; some were aiding Rutherford, and some were trying to injure him. There was a crowd round the hustings. The government party hustled the opposition men, and attempted to prevent them from voting. Gilfoy caught me round the waist after this, and wanted to hustle me into the poll; he said I had not voted correctly. I was in the opposition room twice; the second time I saw parties of two or three of the government side come into our room; Mr. White wished to keep them out; at last a crowd came in, and I thought it about time for me to leave, for I knew what was coming. The rest of our party had left and gone up towards Kenty's; I made up there; when I got about seventy yards there was a gang of rowdies around George Gray beating him; I knew him by his hair and figure; his face was as red as blood could make it; I called out, let him go, don't kill him; they let him go and ran after me. There was a gang by Kenty's mill of government men. I ran back to Schultz's; as I went Cain Mahoney and others ran out; Mahoney tripped me up; I got up, and Mahoney struck me; others behind me kicked me; there was such a gang around that I lay quite still and allowed them to beat away as they pleased. The man who kicked me, I believe, wished to kill me, but Cain Mahoney said, come away, we have beat him enough. They left us, and I got up and tried to get into Schultz's; the door was locked; Mrs. Taylor was standing at her window; she let me in. I was in fear of my life. I saw smoke of guns; I saw smoke as if men were shooting both ways; this lasted about ten or fifteen minutes. These men came down again. The room I went into first at Taylor's was on the left side as you look towards Kenty's. A girl came in and looked at me pretty steadfastly; I suspected her, and went up stairs and locked myself in another room. I found out afterwards that she was a Catholic girl, and carried news to the other side. While in the room I heard a noise of persons beating

others. I staid all night in the house because gangs were around it, and one James Sullivan called out, there is one more in the house, and I'll have him before I go. A few minutes before this Peveril was beaten by a gang of these rowdies. I remained all night because I was afraid of my life. After I voted Mr. Skerry said, now you go away; but he never said this to any of his own party; I could see what he was about.

Cross-examined by Mr. Johnston.—I was in the house and about the polling-place all day. I knew Gilfoxy; I don't think he was tipsy. I was on my way up the road when I saw the men beating Gray; I did not know them; they were the opposite class to us; I don't know whether there were any persons with him of his friends. I had not reached George Gray; I kept on the opposite side of the road; Mahoney endeavored to trip me; I jumped down about seven feet into the place where Schultz's barn was burned; he came off the road and struck at me with his fists; there was another man whom I do not know; I can't say how many there were beside; I believe there were more; I fell down; I was nearly upright when Cain struck me; while down, the man I have spoken of kicked me. I can't say how many reports I heard; I believe there were four or five. I saw, I think, ten guns at John Kenty's; I don't recollect seeing any powder or bullets; the guns were in a room at the end of the house next the polling-place; there was a bed in the room; you went out of the kitchen into the room; a door leading into the front of the house, and another door opening to the left led into the bedroom. John Kenty showed me the guns about ten or eleven o'clock; the guns were fowling-pieces, some single and some double-barrelled. I came from Grand Lake; was living close by. I had no gun. I saw Mr. Skerry come out and speak to the Irishmen; I could not hear what he said. It was some time before I heard the guns.

JOHN MCKENZIE sworn.—I live at Lake Thomas; have been living there nine years; voted at the election for Esson and Annand. I was in the opposition room; three of the opposite party came in; one came up, forced his cheek against mine, ground his teeth, and drew off to strike me; I told him he should be ashamed to strike an old man like me; I did not know them. I turned round to Mr. Taylor and told him we had better go home, as there was appearance of a row. I went out and saw a good many men round one man; they were beating him severely; I heard the cry of murder several times; he was down a long time; I could not tell what became of him. Further down I saw Thomas Lowry go over the bank; I saw several men go after him; I think four or five went over the bank. I made up the road; I was lame; I walked as fast as I could; a little way up I saw a man with his left arm full of rocks, and one in his right hand; they were good sized stones; he was advancing towards a party of men who were ahead; a good many of his party—the government side—were along side of him on the side of the road; they were not far apart; the others were pressing forward toward the opposition side; I passed the government party and our own party; no guns were fired until I got past them; the two parties were in an attitude of war; I expected a row, and tried to get out of the way. There was a

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good deal of excitement previous to the election. After this I met seven men with two voters belonging to the opposition ; I told them they had better turn back, that I did not think they would be allowed to vote ; they did turn back.

Cross-examined by Mr. Johnston.—I went early to the poll, and left before the firing. I was at my daughter's, a mile from the polling-place, a portion of the day. John Spriggs George Taylor, and, I think, Donald Scott, and others were in the opposition room when the occurrences I have described took place ; when I came out I stopped on the platform for some time. I did not notice the guns until I went up the road ; I cannot say who had the guns. I went close by ; I was a good deal agitated and eager to get out of the way ; I did not speak to them ; the only words I heard were "keep back." I had passed Kenty's house before I heard the report of a gun. George Robinson, Benjamin Donald, Henry Miller, and Anthony Weston, were in the waggon when I requested the men to turn back. I cannot say who first told me that a man had been killed. I heard it was John Kenty when I got about a-mile and a half on my way. I did not hear that it was Hurley until I got home.

ALEXANDER STEWART.—I live up the road about seven miles from the polling-place. I went there a little after 8 o'clock on the 12th May. I saw some strangers there ; they were railway navvies. The first disturbance I saw was between Rutherford and another man ; the people thronged around ; that soon got over ; there was not much about it ; some of his own friends tried to take him away ; the majority surrounding Rutherford were of the Government party. I did not see anything material after that, except some hindrance from a crowd of men to voters going up, until the riot. They crowded round the polling-place and obstructed voters. Mr. Skerry requested them to withdraw and make way several times, but they paid no heed. I did not see anything further until the commencement of the main riot. I was in front of the polling-place ; there were very few persons there. I observed a rush from White's ; I ran out, and saw two men down and several beating them ; they were down ; one of the two was over the bank ; those who were beating them were railway navvies. I believe that Lowry and Gray were the men beaten ; they continued beating them until a shot was fired ; they then left off. A body of men came down from John Kenty's ; three of the men who were beating the others were running up towards the Opposition party. The men with the guns were at this time about 400 or 500 yards apart, when I first noticed the guns ; they went on till they got within twenty yards. I put my arm around one man and looked in his face, and said, for God's sake let's have peace ; he said, mind your own business ; some voices called out to me to go back if I valued my life ; I heard voices calling out to the man with stones to go back ; I turned round and went back. The prisoner is a peaceable and quiet person, so far as I know. When I heard the report of another gun I was near Kenty's house ; before this the men who had the guns were running in all directions into the woods. The first gun fired was fired into the air. Young John Kenty and I were going

along the road ; a man belonging to the Government party came up and told us we had better go off the road to save our lives.

Cross-examined by Mr. Johnston.—I had no revolver ; I never said I took a revolver for the purpose of frightening McLean. The riot commenced about two or three o'clock. I was pretty much in the street-way almost the whole of the day ; I was two or three times in the house. I was not present when Gray offered an insult to Hurley and another man out of the window. I believe any man could have polled his vote who wished it. At that time I heard a shot fired ; it was fired over 150 yards from where these men were getting beat ; the men were being beaten opposite the barn on the east side of the road nearest this way ; there were probably from three to four on each of the men beaten ; others were standing scattered ; as I passed them I heard the gun fired. I was within a short distance of the guns when the man with stones passed me. The people with the guns continued to advance up to that time ; both parties were between 15 to 20 feet apart ; I could not distinguish any of them except one man. The reason the men with the guns called upon me to get out of the way if I valued my life, was that they saw the main body of the Government party coming up, and they thought I might be in danger. One of them told me this that same day after the disturbance. I saw no guns at Kenty's ; didn't know of guns being there.

Foreman of jury asked for recess.

JUDGE WILKINS said—Gentlemen, at this stage of the case we have, from intelligent witnesses on both sides, a connected account of this particular case, and I do not think it ought necessarily to be very much protracted beyond its present length.

Hon. Mr. Young—I perceive by the list that there is still a number of witnesses to be examined.

A recess of half an hour was allowed the jury.

At 2 o'clock the Court resumed.

STEPHEN DOWELL *sworn*.—Live ten miles from Dartmouth. Was present at election ; voted on the Government side ; I got there between eight and nine o'clock in the morning. I saw Gilfoy attack old Mr. Rutherford. The parties had separate rooms at the hotel. A little before the row I was standing in the hall trying to coax our people back from going into the Opposition room, but couldn't. They were principally railway navvies ; they wanted the Liberal party to come out and fight ; they tried to kick up a row. I was in the bar-room when the fight began ; I looked out of the window and saw the men running up ; I ran out, and saw Lowry going over the bank : it appeared as if a man had tripped him up. I went over, and coaxed the men not to kill him. *Hurley was there with a stone in his hand, swearing what he would do to him.* I ran across to the barn ; heard somebody up the road crying *murder*, and saw the men rushing up. There must have been *well on to 200 persons on the road* ; they were all pushing on towards Kenty's. I didn't go beyond the barn ; the barn is about half-way between White's house and where the men with guns stood. I saw one gun go off in the air. I could see the navvies trying to get the guns away. I heard *three guns*

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altogether. The next one was fired on the road. I saw *eight or ten pressing upon one man*; I saw him going back in the direction of the mill—opposite where the mill was burnt; I then heard the shot, and saw the smoke; I heard a man was shot; I saw Reeves brought down by a number of men. When Lowry voted, some of the Government party said he had promised the day before to vote for the Government; they said they blamed the Kentys for it; that Kenty's barn had been burned down, and it wouldn't be long before his house would be burnt too. This was in the morning; *things looked very ugly, and I anticipated a row*. The Opposition party did nothing to provoke anybody. *I saw stones fired at the time of the row*.

Cross-examined by the Attorney-General.—About the time I approached Lowry, I saw the men with guns; when I first saw the men with guns, I couldn't tell who they were. I don't think more than five minutes elapsed between the discharge of the first and second guns. It appears that they had broken into them and taken their guns away, and were chasing the man on the lake side when I heard the gun go off. When the last gun went off, it appeared that some men were being beaten on the road by the main body.

JOHN HOLLAND *sworn*.—Live $2\frac{1}{2}$ miles this side of White's. I voted for Esson and Annand; went there about $9\frac{1}{2}$ o'clock in the morning. Saw Gilfoxy attack Rutherford. Some seven or eight of us—two Kentys, Preeper, Peebel, Taylor, and others—started from White's house to go home; when about forty yards from the house, some of the Government party rushed in amongst us and knocked down George Gray; heard one of our men say he was killed. We all ran on. I never stopped to look behind. The rest out-ran me. I went on road opposite the old mill; I waited there; I saw men returning with guns; the Government men kept coming up. Saw Government men coming up *with stones in their hands*; some of them had *sticks*. Heard the men with guns tell them to keep back and they wouldn't hurt them. Saw one of the Government men with a stick knocking men down. The man that was first beaten—George Gray—got a gun from one of them and fired it in the air. Government party took guns out of men's hands and beat them with them. I saw Britton, a Government man, beaten by one of his own side. I saw four or five of our side knocked down. I saw the deceased when he fell; was about forty yards from him. It was nearer Kenty's house—about forty yards beyond Chandler's house. I heard a shot just before he fell, and saw the smoke; it was more towards Kenty's house; I suppose it was the shot that killed the man. The fighting was getting a little slack at this time. I saw some of the men running back towards Kenty's with their guns before Hurley was shot. A young man named O'Donnell threw a stone at me; he was one of the Government party.

Cross-examined by Attorney-General.—I stopped at the Cobequid roads, and looked over just opposite the mill side. About nine or ten men came down with guns. Before a blow was struck, there were between thirty and forty of the Government men very close up to the men with guns. I can't say who fired the last gun. I saw a man fall by the logs after the shot was fired; he staggered and fell sideways. Those that the Government men had

not knocked down dispersed. . After Hurley was killed, saw one of the Government men fire a musket in the air.

JAMES D. H. WHITE sworn.—Keeps Grand Lake Inn; was applied to to accommodate both parties. The south end was set apart for the Liberal party, and the centre room for the Tory party. On two occasions I took the Tory party out of the Liberal party's room. I forbid each party visiting the other's room. I had difficulty in preventing Hurley (the deceased) from going into the Opposition room; he appeared to be the head of a party. Shortly before the row took place, I had no fault to find with any party there. I kept Lowry at my house that night; I was afraid his life was at stake. There was no excitement before the row commenced.

GEORGE GRAY sworn.—Was at election; lived at that time as hired man with John Kenty. I didn't vote. Saw Rutherford's face cut with tumbler. Prisoner and I were looking out of the window. Hurley and Carroll were below in front of the house; Hurley said, "Draw in your head, you Protestant son of a b——." I said, "Ditto, brother." I had said nothing to provoke this. I put in my head and said we had better leave, and about ten or a dozen of us left for Kenty's. When about forty yards off, seven or eight of them got me down and jumped on me; I was fearfully wounded. Lowry came along and told them not to kill me, when they set after him; this enabled me to run; I gained the party with guns, and seized a gun from one of them, and in the act of pulling it, it went off into the air. About fifty of the Government chaps came running up. I took the gun to defend myself against these men; they still continued crowding up. I don't know what became of the gun; I was so beaten and bruised that I lost my senses. The wound now on my head was received at that time.—[Exhibits a deep gash and indentation of skull.]—I was laid up a whole month; I paid a doctor's bill of £11. John Kelly, one of the Government party, said he had a quarrel with Kenty and Peveral, and he would mark them on the day of election, *as there was no law on that day.*

Cross-examined by Attorney-General.—I didn't see any guns at Kenty's. Didn't call Hurley or Carroll improper names.

JAMES KENTY.—Live near Schultz's; was at election. I have been in jail all summer, from the time of the election until last Tuesday week. I voted for Esson and Annand. I heard there was a warrant against me; I came down to give bail, when I was arrested. I voted about 9 or 10 o'clock. I saw disturbance which took place in our room. A number of the Government party came in; one man threw down a cheese and broke a dish; some of them were gritting their teeth and trying to provoke a quarrel. We left the house; some of our party was ahead; saw some of them pounding Gray; he was crying murder. One of them chased me, and *threw a large stone at me.* I said nothing to provoke him. I ran to my brother's house. I passed the men with the guns; they took their stand at the mill bridge. I didn't come back again; I saw nothing more of the row. I ran down to the railroad. I saw Barney Deegan and Benjamin Dowell, who enquired if I had seen Taylor. I hid myself under a log; I was dreadfully frightened. I

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saw the road full of people; they were coming up; could hear them shouting and holloaing; there was a great noise. There was a good deal of ugly talk in the neighborhood for some time before the election. I had to remove my family from home for fear of their lives. *I can't tell what I was put in jail for.* I have a wife and three children. I was sent for as a witness on the coroner's jury.

Cross-examined by Attorney-General.—I went straight on to my brother John's house. Gray didn't overtake me; I met the men on the mill bridge; I passed so quickly that I couldn't tell who had the guns. I found Mr. Stewart, who makes buckets, at my brother's, tackling his horse. I can't say where the guns came from.

ALEXANDER STEPHEN *sworn.*—I am a merchant—partner of Mr. Esson. I am a J. P. I was at the election at Shultz's, acting in the capacity of representative for Messrs. Esson and Annand. There were not many present at the opening of the poll; almost immediately after, the railway navvies crowded in at polling-place, and took particular notice of voters for the Opposition. I had occasion to object to voters and swear them. I was threatened, and called them to account for it in the presence of the presiding officer, and told them I was there in the discharge of an important duty, and would not be intimidated. They *did threaten* and try to intimidate me. We adjourned a short time for refreshment; they crowded into our room, and I entreated them to go to their own room. One man said, "By G—, you refused my vote, and *you shall pay for it before you go home.*" The row took place about half-past 2 o'clock. I looked out, and said to Mr. Farrell, let us go up and try and quell the row. Mr. Farrell came out and left me; I saw it wouldn't be prudent to go up alone. I then returned to the poll, and asked Mr. Skerry to swear in special constables. Mr. Gaull *never asked me to swear in constables.* Mr. Skerry swore in several, with Capt. Mitchell at their head; they returned with Reeves and Lane, who were dreadfully disfigured; they were brought into polling-booth. Between 30 and 40 navvies crowded in and beat these two men who *were already covered with blood*; I said, for God's sake leave the men alone—they have got quite enough; I heard the words *murder him, murder him*, when they commenced an attack on me.

JUDGE—All of this is subsequent to the homicide.

Witness proceeded—I recognized Bryan Kennedy; he twisted his hand in my hair, and I was laid on a table and beaten.

JUDGE—I have already given my opinion that this is not legitimate evidence.

Hon. Mr. McCULLY—I must say that I cannot see how Mr. Skerry's evidence was allowed on this point, and we are precluded from giving the same testimony. A party may be an accessory after the fact. Mr. Stephen was threatened.

Mr. STEPHEN—I was seriously beaten; I was confined to the house; I feel the effects of it now. They had me on the table pounding me. I threw myself on the floor; ran over to Mr. White's, and secreted myself in a closet

in a room in which some ladies were; I was afterwards taken up stairs. Bryan Kennedy *voted for Falconer and Gladwin*; he did not split his vote. In consequence of the threats given me on that day, and knowing I was to remain after the cars left, as I was to bring home Gay's River poll-book, I borrowed a pistol from a friend there about two o'clock in the afternoon. Preeper was the *only man* that gave a cross vote on that day; he voted for Esson and Gladwin. No person was prevented from voting that I know of. The voting was quite slack towards one o'clock. Just before the row commenced no voting to speak of was going on. Was not informed that there were guns on the ground; it was after the man was killed that the violence I have spoken of was committed. I can't say how long the pistol had been there; I went outside and got it from a friend; don't know how long the pistol had been on the ground. I saw a *considerable number of men with stones on their arms and in their hands*. They were navvies. There was *great danger of our men being killed*.

JOHN PREEPER.—The prisoner is a brother of mine. I was talking with Mr. Dennis Ring; he said *he could not say whether George Preeper shot the man or not*. This was across the fence a few rods from his own door, about three or four weeks ago.

Cross-examined by Mr. Johnston.—I asked him if he heard two shots; he said yes, close together. I asked him if he had seen Hurley with stones; he said he did not know.

The Court then adjourned.

FOURTH DAY.

TUESDAY, November 22, 1859.

DAVID KING *called and sworn*.—Been residing lately at Meagher's Grant. Worked in the employ of Messrs. Sutherland & Sons last spring. Boarded at Bryan Kennedy's; was at his house at Grand Lake the night before election; saw fire-arms there—two pistols and one gun. They were oiling the locks, *preparing them in case they should be required for the election*. There were nine other railway navvies there; Carroll was one of them. I was at polling-place on day of election. Sutherland had a large number of men working there. About a week before, a gang of them was sent to Stewiacke. *Bryan Kennedy gave out on that day that the men who voted for the Government party would receive their day's pay*. Sutherland's men came to the polls; they had sticks with them; they were brought down after I came; they put them away after they came down. An old man named Reid was asked by one Gossin if he was going to vote; he said he had no vote, but if he had he would give it *for the Opposition*, when Gossin up fist and *knocked him down*. Was in Opposition room and saw Rutherford struck. I left the house and ran up towards Kenty's. I saw seven or eight men beating Gray. Hurley was pounding at him. *Hurley was acting skipper for Cain Mahoney at the time*. Gray cried for me to assist him; I couldn't render him assis-

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tance. I ran up the road; they cried out *to kill me*. I approached the men with guns and seized one of them to protect myself; I clubbed the gun to defend myself when I was knocked down. The crowd pressed on. I knew Hurley well; he had *stones in his left arm, and a stone lifted in his right hand*. Hurley was close upon Preeper; the latter gave way, and frequently told him to keep off or he would shoot him. This was between Kenty's house and Chandler's. There was a man between Preeper and me; Spriggs was the man; I never *saw him after that night*. The mob came close up and surrounded us. Some of the Government party struck me at the back; I was knocked down and dragged. One gun went off when I fell, and while I was down two guns went off in quick succession; I was near the mill side of the road, and concealed myself under the bridge across the road; I was severely cut and bruised, and had lost my hat and shoes. I ran to James Kenty's house.

Cross-examined by Attorney General.—I didn't vote at election. The bridge is about one hundred yards from Kenty's house. They were on this side of the bridge when they were beating Gray. I think there were eight or ten people with guns. The other party numbered between *one and two hundred persons*. I don't know the man I took the gun from. When I last saw Preeper he was on the wood side of the road.

JOHN W. WILLS, *examined by Mr. Savers.*—Was at Grand Lake on day of election. Left Halifax about half-past nine, after I voted; arrived there between eleven and twelve o'clock. Staid at election some time. After obtaining some refreshment I went over to polling-booth and found them smoking. Was amused to see navvies *fencing each other with short sticks*. Saw a number of men come round from the back of the hotel. The ring-leader of the navvies cried out, that is the fellow with the grey trowsers on; they yelled out *like wolves*. When the countrymen saw them coming they ran; the navvies pursued them, knocked three of them down and beat them unmercifully. I never witnessed such brutal treatment. While the three men were being beaten the rest were pelting the opposition men *with stones*. Saw a respectable looking man set upon by the navvies, who threw him into the river and nearly murdered him. The navvies who had beaten the three men returned back to polling-booth. The men with guns went back and returned. I heard a gun go off, and supposed it was fired in the air. The navvies numbered fifty and over when they ran up. Saw Stewart amongst the men. The navvies rushed on the men, seized their guns and beat them; almost massacred them *with sticks and stones*. I heard another shot right in the muss. I don't think anybody could tell who fired the shot. I saw nothing in the conduct of the liberals to provoke the others to fight.

Cross-examined by the Attorney General.—The three men were beaten about the same time. This occurred about the length of a square—from Crow's corner to Morton's—from White's house. I didn't see anything of the men after they were beaten. Some of them ran away, and the others were taken away by their friends. They went in a northerly direction from the house. After the first row the navvies returned to the polling-place. It

was at the time they returned to polling-booth that they drove the man into the water. I heard the alarm and one other shot. I heard the men with guns say, keep off, if you come any further we will shoot. I furnished Mr. Stephen with a revolver when I was coming away. When I go to such a place as the Grand Lake, I always take a revolver with me.

WILLIAM COX sworn.—I taught school for some time at Grand Lake ; was living in Halifax at the time of election. I went up in the morning train, with the intention of assisting Mr. White in his house on that day ; Horton went with me. I am acquainted with Mr. Mosse and with Mr. Hunt, conductor ; they went up that morning. Mr. Mosse was engaged that morning putting on railway navvies at the different stations on the way up. I thought it strange that they did not pay for their fare. I had to pay. Every man had a green beech stick, with the bark peeled off. I said at the time to the man with me, "this looks warlike;" some of them had crow-bars. These men came off the cars at No. 18. They piled their weapons under White's long barn ; *I saw them piled under there afterwards* ; underneath the barn next the lake. On going into the polling-booth, Hurley (the deceased) caught hold of me roughly and tore the buttons off my coat ; this was early in the morning. There might be over one hundred navvies there. *I didn't vote anywhere.* I was in rooms on both sides that day. I heard there was some fuss there. I saw a party about Mr. Rutherford, and put him into the stable and put the bar up. When I went out of the other door they were beating Thomas Lowry ; there might have been *over a dozen on him* ; they were beating him with *sticks and stones* ; he was crying out "murder;" I rescued him and took him into Mr. White's house ; he appeared to be *badly hurt*. I saw an old man with a white head—John Reeves—dragged into polling-booth *by the hair of his head* ; they afterwards *jumped on him*, picked him up and *threw him on the table*. I heard guns discharged ; I heard one discharged first, and two others that went pop-pop. The road appeared to be *full of people*. I saw men beyond the bridge. The road from polling-place up was *literally full of people*. There must have been a *hundred and fifty persons on the road*. I saw Hurley brought down almost immediately after the two guns went off. I heard the man was dead. I saw him afterwards, washed his face and closed his eyes.

JOHN KENTY sworn.—Live at Grand Lake ; I was born there. My house is between three and four hundred yards from White's ; it may be four hundred yards. Michael Kearney and two other railway navvies came to my house a week or fortnight before the election, challenged me about canvassing, *threatened to beat me, drew a stick across my head, and drove me out of my house*. From circumstances that came within my knowledge, I apprehended serious disturbances at the election. On the morning of election, while I was shaving, Peverel came in and told me somebody wanted to see me ; I found four or five men—George Taylor, Mr. Stewart, and others outside ; they asked me if they could put their horses and waggon up in my barn ; others came—I was asked to put some things in my house ; I was told by Augustus Robinson that they were fire-arms. I said what are you going

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to do with these guns? Robinson said we have brought them to protect ourselves going home. They would have to pass a place called *Shanty Town* on their way home. I told them I didn't think it was prudent to leave them in the waggon, they had better go into the house. I didn't know the guns were coming there. The fire-arms were done up in two different packages—one in rug or quilt, others in oil-cloth. I saw no ammunition. I put them in an unoccupied room; I locked the door; I didn't like to leave them exposed; I carried the key. These people had gone, and I followed down to polling-place. George Gray was a hired man at my house. I was appointed inspector for Messrs. Esson and Annand. I attended to that duty; I quitted it because *I was frightened of my life*. The navvies *threatened my life*. I went into opposition room. I saw Rutherford struck by Gilfoy. I then went home between one and two o'clock; I was afraid there was going to be a row. My wife was in a delicate state of health. We proposed to go up to my brother James's. I then thought of my brother and went down to the polling-booth and could not see him. I got a hint the other party knew the arms were there; I got uneasy; I went to the room that contained the arms; I left the key in the door by mistake; I met Thomas Lowry and showed the arms; I went back with him. I met a man named McDonnell, belonging to the other side; he said he didn't wish to see me and my brother hurt, and thought I had better *clear out*, as there was going to be *serious work*. I saw Gray and Preeper looking out of White's window; two men outside said something to them; I saw a stone thrown up at the window; I next saw some people rushing out of the house. My brother came along; I said let us get off as soon as possible. George Gray was seized and knocked down. We went right straight home. I met some of our party between the mill bridge and my house returning with guns; I don't think there was over a dozen guns. I kept right on; told my wife and children to clear out for God's sake; they went to a house towards Halifax. *Stones were flying*. A man came up with a *handful of stones*, first flying at one and then at another; he aimed a stone at me, but it didn't strike. Gray came out of crowd all over blood, seized a gun and fired it off in the air. I had no gun in my hand; I don't own any. I went back of my house up on the hill; just as I got there I heard two shots, one right after the other. The parties appeared to be in a jam. The shots came from between the bridge and Mrs. Chandler's house. A lot of them rushed up and broke the windows of my house; I haven't slept in the house since; I have left it. My brother took down towards the lake. I have *been in prison all summer*; heard there was a warrant out, and came down and gave myself up.

Juror.—What was you in prison for?

Witness.—I don't know; I have been in prison since the 25th May up to within a short time.

Cross-examined by Attorney General.—Charles P. Allan, Stewart, and Mr. Miller, came to my house in waggons; Alexander and George Taylor were also at my house. Robinson left his wagon at the end of my house. I didn't assist in removing fire-arms into my house; I did not think there was

over a dozen guns there. The persons that put up at my house lived at Lake Thomas; I can't say how many. Lowry knew that the guns were at my house. After two o'clock I went back to polling-place in search of my brother; Lowry was not with me the last time; he was with me the second time I went to the house; it was after twelve o'clock when he came up with me; I won't be positive whether it was the third time I was at my house; I am positive it wasn't the last time. Lowry left the room before I did; I don't know who left the house first. I can't say whether anybody else was attacked except Gray as our party left White's. The guns were all gone when I returned to the house the last time. I couldn't identify who had the guns at the time of the riot. My brother and Richard Peverel were in the same room with me in prison. Preeper was kept in a cell, up stairs. My brother, Peverel, and I were in cells.

JAMES HUNT.—I am conductor on Eastern cars; I acted as conductor of morning train on election day. A great many persons went up that morning; we took in from ten to twelve navvies at Richmond, and by the time they arrived at Shultz's they numbered from about twenty-five to twenty-six men. I didn't keep any check—they *didn't pay*; *Mr. Mosse passed them up*; I brought a lot down from Elmsdale to Grand Lake *by order of Mr. Mosse*.

Cross-examined by Attorney General.—About two years ago I used to bring navvies from one place to another, where they might be working, *but not latterly*. All the railroad navvies on *that day* passed free to Grand Lake *by order of Mr. Mosse*.

CATHERINE SPRIGGS.—I remember the time of the election. I lived at George Preeper's house. I remember George Rutherford coming to the house; he asked if the boys were in; I said no, not at present. George was on the swamp. He asked George if he would go with him; he went with Rutherford in a waggon; he didn't come home that night, and didn't come home until the morning after the election; he did not take a gun or any other weapon with him.

Cross-examined by Attorney General.—I am sister of the Spriggs who was at the election; I don't know where he is. Preeper came home morning after the election; he did not bring any gun home with him.

Defence rested here.

JAMES HUNT *re-called by Attorney General.*—Neither Mr. Mosse or Mr. Scott were on the train that morning to my knowledge. I have seen men riding on baggage-train.

Cross-examined by Mr. McCully.—It is *quite likely* Mr. Mosse might have been on train without my knowing it; he is frequently on the train a long time before I know anything about it.

Re-examined by Attorney General.—Mr. Mosse *frequently rides on the engine cars*. I didn't see any sticks to my knowledge.

Cross-examined by Mr. McCully.—There *might have been sticks* there without my knowledge.

MR. YOUNG said: With your lordship's permission, Gentlemen of the Jury, in fulfilling the responsible duty of closing for the defendant in this case,

after the long trial which has engrossed your attention for the last six days, I shall adopt the hint thrown out by your foreman, and not unnecessarily waste your time or occupy your thoughts. I have under my hand I presume an accurate—certainly a full—report of all the evidence given on both sides, which, if it do not contain all the facts, at least embodies the leading features of the testimony. I have seen and have been delighted to see the patient attention which, as intelligent men, you have given to this case. The prominent facts have been so repeatedly proved by the witnesses adduced on both sides that they are familiar to us all, and it would be an abuse of the privilege which I now exercise to enter into them fully. But yet, gentlemen, I have a public duty to perform to the community and my client, and that duty shall be performed faithfully and fearlessly. It is said that the law of the land, on a trial of this kind, requires that the Jury should be kept together, and prevented from returning to their homes and families. I am not quite sure that the stringent rule as applied in England, ought to have effect in this country. This, however, is a matter of consideration for the legislature and not for the Court, and therefore, gentlemen, the inconvenience to which you have been subjected was an unavoidable necessity. You have been told by my learned friend who opened this case that it was of a political character; this cannot be denied; it springs out of an election which stirred the feelings of the people of this country to their lowest depths. The memorable struggle which took place on the 12th of May, 1859, was watched with an intensity of feeling by the majority of the people of this Province, which but few who are opposed to them can understand or appreciate. The minds of the people were inflamed and agitated; precedent transactions had tended to make them vigilant and watchful. The portentous clouds which hovered over the land, charged with elements of civil strife and contention, did not pass away unmarked or misunderstood; and therefore a political aspect has, of necessity, been thrown around the present case; but yet, standing here as the counsel for the prisoner at the bar, I feel it my duty to endorse the sentiments enunciated by the learned Judge who presides at this trial, and I now unhesitatingly avow to you that this case must be tried—that the prisoner at the bar must be acquitted or found guilty—upon those general principles of law which apply indiscriminately to all criminal cases. I am not to address you as Conservatives or Liberals, Protestants or Catholics, (in a case like this I forget these distinctions) but as intelligent men in whose keeping the liberty and fortunes of the prisoner are now placed; nor do I entertain the slightest apprehension that conviction in this case can by any possibility be had. In addressing myself to your sober judgment, in avoiding all appeals to your passions, prejudices or predilections, I feel that I shall not only pursue a course right in itself, but one which will ensure to the prisoner substantial justice.

Gentlemen, strange revelations have been elicited during the present trial. A sort of drama has been enacted, and the shifting scenes have exhibited the occurrences we are investigating, in all their variety of aspect. Actors we have had, playing a more or less conspicuous part. Some have been the heroes, others the victims of the plot. Let me contrast a few of these, each with the

other. The two Kentys have been examined. Upon James Kenty, at the close of this trial, not the shadow of an imputation rests—no single fact has come from the mouth of any witness, either for the Crown or for the prisoner, implicating him in these transactions. He had no gun, he struck no blow, he neither assailed others nor was himself assaulted; and yet under this extraordinary inquisition—(referring to the Coroner's inquest)—a document which deserves and shall have something more than a passing remark from me—James Kenty has been incarcerated in the common jail for six long months, and his family deprived of his support. John Kenty was equally innocent of any participation in this riot; he did nothing which the law did not fully justify him in doing; and yet these two industrious and intelligent Nova Scotians were hurried off to jail, charged with murder under circumstances which precluded their obtaining bail, and there detained, away from their families, for those six months. Whether they can obtain any redress for this grievous oppression, is another question; but if this trial has done nothing else it has shown that there is something in the system, or the operation of the system, radically wrong. People talk sometimes of sending a man to jail, with a flippant carelessness altogether unaccountable. I only wish that some of these could experience but for a single night what deprivation of liberty really is—what a sensitive mind must feel when incarcerated in a jail. The mental agony, the prostration of spirit, the utter subjugation of that feeling of freedom without which life is robbed of every charm—must be experienced to be appreciated. These Kentys have been the victims; who have played the heroes? Mr. Brian Kennedy was called as a witness for the Crown. On his direct examination he revealed very little upon which a charge could have been fastened upon him. Had he been questioned no further than the Attorney-General questioned him, you would have come to the conclusion that he was a model pacificator: but, by-and-bye the facts begin to accumulate; you find that he was the man that struck the first blow that led to the riot; that fire-arms were prepared in his house the night previous to the election; that Mr. Brian Kennedy, this quiet and peaceable man, enjoys the singular distinction of having felled to the earth with a bludgeon no less than three Nova Scotian farmers. We find him a prime ringleader in the whole transaction. Who dragged John Reeves, an old, gray-headed man, across the street, by the hair?—Brian Kennedy, the pacificator, who was not ashamed to commit that disgraceful and cowardly act. What then will you say, gentlemen, when I tell you what you have not yet learned, that the climax of these strange transactions was capped by this same Brian Kennedy being summoned upon the coroner's jury of twelve, who found the defendant and his party guilty of murder. Gentlemen, such a coincidence as this I believe is unexampled in the juridical history of Great Britain or her colonial possessions. The prime instigator, the main actor in the riot, actually sitting in judgment on the ten men he had outraged and insulted, finding them guilty, and aiding in the proceeding which consigned four of them to a jail! Who were they? George Preeper, Peter Spriggs, John Allen, John Reeves—the old man who was bruised and dragged by the hair—Charles Miller, John Kenty, James Kenty, George Gray—who was so badly beaten that his friends could not recognize his

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features—John King and John Peverel ; these men are charged by the Coroner's jury, " that they, the said Patrick Hurley, feloniously, wilfully, and of malice aforethought did kill and murder."

An indictment need not have been found—parties can be brought to trial upon the finding of the Coroner's Inquest—and therefore it follows that ten Nova Scotians, against nine of whom, at least, not even the pretence of a charge of criminality now exists, might have been arraigned at this bar charged with murder upon this precious document. This should prove a warning to other Coroners, and, I hope, will teach a useful lesson which in future years may prove advantageous to the people of this country.

But, gentlemen, it has been said that a life has been sacrificed. The life of whom, let me ask ? Of him who was merely second to Brian Kennedy in the brutality of his conduct. The unfortunate Hurley rushed upon his fate. That he was sent to his long account unprepared is a misfortune that we must all deplore ; but the act cannot be re-called. To sacrifice Preeper, who, I contend, exercised only those rights which as a citizen and a freeman he was entitled to exercise, will not re-illumine the light that has been quenched in darkness, nor restore life and being to the deceased. If guilty, Preeper should be convicted ; but to create a new and second victim heedlessly without cause, would be but to sacrifice to your feelings the duty you owe to your country and to her laws.

But, gentlemen, we are told that there was but little disturbance at the Grand Lake. How came it that Alexander Stephen, under the ægis and protection of the law, while fulfilling a public duty as the representative of two of the candidates for election—having done nothing to excite ill-feeling or provoke strife—was beaten, bruised, and trampled under the feet of a lawless mob ? And yet they who perpetrate this outrage are to go unpunished, while Preeper must be sent to the penitentiary and suffer imprisonment, it may be for fourteen years, to lose his liberty and wear the felon's dress ; while Kennedy, Mahaney, Gilfoy and the others are all permitted to walk abroad unquestioned in the majesty of perfect innocence, and laugh to scorn the law which thus allows the guilty to escape and condemns to ignominious punishment the innocent. Justice here has been blind on the one side, and wonderfully keensighted on the other.

Before I proceed to a condensed review—and it shall be but a condensed review—of the testimony, permit me to say a few words to you on the law ; not as respects the distinction existing between murder and manslaughter, but touching those principles which separate manslaughter from excusable homicide.

Perhaps, gentlemen, of all branches of the law that of homicide has been most clearly and most ably laid down. Two of our most intelligent and distinguished writers have paid it special attention. Judge Foster has bestowed upon it all the resources of a practised and acute mind, and so well-defined and established are these principles that rarely or ever does a question arise on their application or extent.

The law of homicide in self-defence is described in 1 Russel on Crimes,

p. 660, in these terms, which are derived, in fact, from Blackstone and Stephen:—

"When a man is assaulted in the course of a sudden brawl or quarrel, he may, in some cases, protect himself by killing the person who assaults him, and excuse himself on the ground of self-defence. But, in order to entitle himself to this plea, he must make it appear, first, that before a mortal stroke was given he had declined any further combat; secondly, that he then killed his adversary through mere necessity, in order to avoid immediate death. Under such circumstances the killing will be excusable in self-defence, sometimes expressed in the law by the word *chance medley*, or, (as it has been written by some) *chaud medley*; the former of which, in its etymology, signifies a casual affray; the latter an affray in the 'heat of blood or passion.'"

"Homicide upon chance medley borders very nearly upon manslaughter; and, in fact and experience, the boundaries, in some instances, are scarcely perceivable, though in consideration of law they have been fixed. In both cases it is supposed that passion has kindled on each side, and blows have passed between the parties; and in the case of manslaughter it is either presumed that the combat on both sides had continued to the time the mortal stroke was given, or that the party giving such stroke was not at that time in imminent danger of death. And the true criterion between them is stated to be this: when both parties are actually combatting at the time the mortal stroke is given, the slayer is guilty of manslaughter; but if the slayer has not begun to fight, (having begun) endeavors to decline any further struggle, and afterwards, being closely pursued by his antagonist, kills him to avoid his own destruction, this is homicide excusable by self-defence."

Again, gentlemen, this principle is carried one step further:

"The party assaulted must flee as far as he conveniently can, either by reason of some wall, ditch, or other impediment; or as far as the fierceness of the assault will permit him; for it may be so fierce as not to allow him to yield a step without manifest danger to his life, or *great bodily harm*; and then, in his defence he may kill his assailant instantly."

In the year 1832 a celebrated transaction took place in Spafield in London, which attracted much attention at the time. An assembly, by some declared to be legal, by others illegal, congregated there. The policemen rushed to it and proceeded, in a violent and harsh manner, to disperse the mob. One of the policemen was shot, and the Coroner's Jury decided that it was excusable homicide. In a review of the doctrine held in this case under my hand, certain principles are laid down to which I invite your attention:

"Excusable homicide, as the name denotes, implies some delinquency, however slight, in the perpetrator. It is of two kinds. That by misadventure or accident, being quite beside our present purpose, it is sufficient to name only. The other, like one form of justifiable homicide, occurs in self-defence, but differs from it in some particulars, of which the chief is this: that entire blamelessness does not seem to be required of the party slaying, in all

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the circumstances that led to the homicide. Thus, if one be engaged in an illegal act, but not of such a nature as to justify the killing him, and be so violently assaulted that for the preservation of his own life he kills the assailant, such a homicide would be excusable, although it arose in the first place from the misconduct of the slayer."

Now, gentlemen, you will perceive that I have opened to you shortly, but I hope clearly, the law, as it bears on this case. You occupy a highly responsible position—far different from that of a jury on a civil trial. In the latter, the jury are called upon to find the facts—the law is in the bosom of the court. But on a criminal trial, the jury are the judges both of the law and the fact. Where the law is doubtful, the jury will, of course, be directed by the court. But the law being clear, as in this case, which is a mixed question of law and fact, it comes entirely within the cognizance of the jury. Anciently, in England, on an Indictment for Libel, it was supposed the jury could do no more than find the fact. But after a long and memorable struggle, illustrated and adorned by the genius and eloquence of some of the most able members of the British Bar, more especially Erskine, it was by the British Parliament declared that in a criminal action for Libel, the facts and the law should *both* be submitted for the decision of that jury. You have, therefore, the right, first, to consider whether, under all the circumstances, a crime has been committed. With you rests the credibility of the witnesses, and if you disbelieve them, you have a right to reject their testimony either in part or in toto, as you shall see fit. You are privileged to apply the law to the testimony, and, judging from all the facts as they bear upon the case, to say whether the prisoner at the bar be or be not guilty.

The witnesses for the Crown—Kennedy, Ring, Kelly, Sutherland, Mackintosh, Smith, Deegan, Mahaney—have all been examined before you. You have marked carefully their respective demeanours; you have, I doubt not, weighed the discrepancies and improbabilities every where apparent in their testimony, and you are to judge which of them, and what portions of their evidence you will credit; but recollect that most of the leading witnesses for the Crown have come here to vindicate their own position; they were parties more than witnesses, and were all, more or less, mixed up or participators in the transactions I have but faintly delineated to you. Gentlemen, the occurrences in May, 1859, have still left their traces upon our memories, and the part those witnesses played in the drama should not be lost sight of when you come to weigh the evidence they have given.

I will not import into this trial matters that do not legitimately belong to it; but it is impossible to exclude from our view what must have passed through the minds of the political opponents of these men on that day. Could they forget that but a few miles from the scene of this outrage, another had been perpetrated—where the blood of Nova Scotians still reddens the soil, and is still unrevenged—sending up to heaven an eloquent, but fruitless, appeal? No, gentlemen; the memory of a too celebrated shanty has not yet passed away in Nova Scotia. Could they forget that but a few miles further on, at a previous election, nothing but the strong arms, and stalwart frames, and

fixed determination of the Nova Scotian freeholders stayed the perpetration of a still greater outrage. It was therefore no idle fear, no imaginary terror which prompted these sober-minded, industrious and frugal freemen to prepare for any emergency. They believed conscientiously that they were to be assailed—that their privileges as freemen were to be invaded, and when they saw navvies congregate around the hustings—strangers to us—a vast number of them not entitled to vote; when they ascertained that this multitude of men had been brought up by the railway free of charge; that they had been accumulated there by officers of the government,—was it extraordinary or unnatural that some very significant reflections should have passed through their minds? Not that for a moment I would convey the impression that the officers under government who authorised the conveyance of these men anticipated such a scene as ensued; but such a congregation of men, paid out of the public funds for their day's labor, appearing at a polling station where two-thirds of them had no right to be, is not, to say the least of it, a very creditable incident in the history of the election of the 12th May last. Reflect, again, what did those men do? Was the assault on Rutherford, Brown, and others, to rouse no resentment, to have no influence on the minds of the parties supporting the Opposition? Were they to remain calmly placid and await the moment when the tide of passion should set these men upon themselves? Surely not. That these acts of aggression meant something, the facts of this case too clearly prove. It is abundantly evident that the temper and disposition of that assemblage was inconsistent with the sober, rightful, and constitutional exercise of their highest privilege by the intelligent and industrious inhabitants congregated at that polling place.

A good deal has been said, and necessarily will be said, about the production of arms on the occasion in question. I have a few remarks to make to you on the subject. That men should be found in the possession of deadly weapons, is a circumstance that at all times creates a feeling of suspicion. But, gentlemen, it is a common law right, conferred on the people of this country as a part of their constitutional inheritance, drawing its origin not only from that law, but secured and sanctioned by the Bill of Rights of 1688, that a British subject is justified in arming for the defence of himself or the protection of his property. A conscientious, prudent, and cautious man hesitates long before he uses a deadly weapon for the protection merely of property. But for the protection of the honor of his wife or daughter, to secure them or himself from outrage, to protect his hearthstone or to save his life, the law gives, and properly gives, to him that privilege. These men, then, who carried up the guns, under the apprehensions to which I have referred, had a right to do so. It is in evidence that their object in taking them to Kenty's was not to use them there, but to protect themselves on their return home.

Now, gentlemen, let us transport ourselves to the scene which took place on the morning of the day in question. It is certainly a most remarkable circumstance, that up to the close of the case of the Crown, not the most remote evidence of the real character of these outrages was elicited. Mahaney tells you it was a "little bit of a scrimmage;" Sheridan says a "bit of a

fight, a struggle as I have said. Crown ill.

Bear in mind, as I have said, that the only quarter in which the expression of the opinion of the Gray exists, that they it be proved, lips of the heard-of.

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fight, a small scrimmage, a slight brush, a small affair." In fact, gentlemen, as I have said, nothing came out in the examination of the witnesses for the Crown illustrative of the real nature and character of this transaction.

Bear in mind, gentlemen, that no provocation has been proved, or even alleged as coming from the Liberal party, worthy of an instant's consideration. The only pretence of a justification is to be found in the expressions attributed to Gray, with which, as it was vulgar and indefensible, come from what quarter it may, I will not defile my mouth. I was sorry to hear the Attorney General, on the examination of one of the witnesses, by repeating that expression, draw forth a natural and visible expression of feeling from a portion of the audience; and I was happy to hear a respectable young man like Gray explicitly deny that he ever used the words imputed to him. Gray says that they came from Hurley. But even if Gray had used those words, will it be pretended that a single expression like that, casually dropping from the lips of one man, afforded the slightest justification for the enormous and unheard-of aggressions committed by the supporters of the government.

Up to half-past two o'clock, when the final riot commenced, not a Liberal had struck a blow, or in any way violated the peace; and indeed, gentlemen, why should they? Confessedly, they were the smaller party, overpowered by numbers; and, even if possessed of the malignant spirit which animated their opponents, being the weaker side, their policy would have been to keep quiet. But they were not; they attended the polls in the performance of what thousands of conscientious men in Nova Scotia held to be a sacred duty on the 12th of May, determined to exercise their privilege as freemen, and peaceably maintain the rights secured to them by the constitution, and which they could not pusillanimously forego. The only witness who corroborates the fact that Gray used the words imputed to him is James Sutherland. Take again the case of Lowrie. I will not go over the whole of his testimony, for it is yet, I am sure, fresh in your minds. The Attorney General, however, endeavored to extract from one of the witnesses that Lowrie was but assailed by two men. That would have been bad enough, and no vindication of the act. But, gentlemen, it has been proved by several witnesses, whose testimony is uncontradicted, that six or eight of this mob assaulted Lowrie, jumped on and maltreated him. It is proved that this very Cain Mahaney, the foreman of Brian Kennedy, struck him on the face after Doull had coaxed him not to kill the man. A pretty, happy, social, peaceful partnership seems to have existed between these gentlemen; for with singular magnanimity Cain Mahaney then says—"Well, poor fellow, let him go—he has got enough."

Again, what of Mr. John McKenzie, who says that while peaceably in the room belonging to the opposition, three of the government supporters came in, and one of them laid his cheek to his, ground his teeth, and made as if he was about to strike him. In fact, gentlemen, the whole conduct of these men during election day and previous to the final assault, exhibits a deliberate purpose—a fixed determination to annoy and outrage their opponents. The expression that fell from Brian Kennedy at the close of his evidence proves pretty conclusively that the anticipated presence of guns at that scene

had a wonderful effect in curbing and controlling the passions of the excited mob. About 2 o'clock, as Kennedy admitted, the government supporters were groggy—the liberals sober. During the first part of the day these rowdies being comparatively sober, confined themselves to the minor assaults described, but about 2 they forgot their caution, and excited with liquor, out came the real nature of the men, and then commenced the grand outrage which terminated in the death of Hurley.

It is clear that three or four of the Liberal party were marked out for vengeance. Lowrie because it seems that the navvies, having some expectation that he would vote for the government candidates, were disappointed; Gray, because when assailed in opprobrious terms he replied with spirit; and Preeper, because he stood alongside of Gray at the window. Now in what position did the parties stand just previous to the final attack? Their room having been invaded and threatening indications made, it became clear to them that an attack was contemplated, and they determined to withdraw in a body for the purpose of proceeding to their homes. They did so leave, and then took place this little scrimmage—this small affair, as the witnesses for the Crown would want you to believe—then it was that these cowardly vagabonds struck down Gray from behind, jumped upon him, and bruised him to such a degree that the effects are visible to this day in his head and shattered nerves; then it was that some half-dozen of them assailed and maltreated Lowrie; then it was that these parties, with Hurley among them, armed with stones, advanced upon the liberals, who had armed themselves, not for assault, but for protection while cries of murder resounded through the air, mingled with the shrieks and groans of the overpowered and beaten liberals; and this is the scene which the crown witnesses have attempted to describe as a slight scrimmage. I should be glad to know what these men who had armed themselves were to do when thus armed. Were they to run and leave their companions to the mercy of those fiends in human shape? Surely that was no part of their duty. They took the more manly, the more honorable, the wiser course—they succeeded in diverting the attention of the mob from their companions, and then they remain stationery—commit no act of aggression—fire no guns, but simply stand their ground. Had they rushed to Kenty's, armed themselves with guns, returned and avenged the injuries inflicted upon their companions, then indeed it would have been no part of my duty as an advocate to defend the act; but they return not for vengeance but to rescue their companions; a shot is accidentally fired in the air—it came from the gun carried by Gray, who had succeeded in escaping and joining them about twenty yards from where he was maltreated. But the government supporters, not content with what they had already done, advanced upon their opponents, some armed with sticks, some with stones; and they are told to "stand off"—to "keep back." The warning was disregarded—the liquor had made them bold—careless of consequences, and bent upon further outrage, they press forward. The Liberal party, among whom was Preeper, fly towards the woods, pursued—that Preeper ran is proved by the fact that originally he was on the upper side of the road. Brian Kennedy knocks down three men, and aims at

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Preeper the fourth blow, which, had it not missed its aim, would have, as he said, put him past shooting Hurley. Hurley is even then following up Preeper, against whom, as I have said, he had a grudge because he stood beside Gray at the window; Hurley is armed with stones. Some of the witnesses tell you there were fifty, some sixty, and one one hundred and fifty of the supporters of the government there—another says the whole road was streaming with men. Why did they advance? What necessity existed for them to assail the Liberals? Was there any thing to prevent them returning to the polling station? Nothing. Had they been content with their achievements performed, Hurley would yet have been in the land of the living. They press on, and Preeper time and again warns Hurley to desist; but no; the lust of revenge was unsated; and then Preeper, feeling that his life was in danger, or that he was in imminent danger of receiving grievous bodily harm, fired the shot (*if he did fire it*) which resulted in the death of Hurley.

Now, gentlemen, you have two issues to try. First, whether Preeper discharged the gun which occasioned Hurley's death; secondly, if so, whether, under the circumstances, he was not justified in doing so.

[The learned counsel then took up the evidence bearing on the first issue; and argued that the witnesses for the Crown disagreed. That Ring swore that the muzzle of the gun was within six inches of Hurley's breast when the shot was fired; while Mackintosh declared that they were thirty feet apart. That McDow and Doull both say that two shots were fired close together,—from whence they proceeded, or which of them caused Hurley's death, did not appear. He urged that the testimony on the part of the Crown should be convincing and indisputable, otherwise the jury were not justified in convicting.]

But, gentlemen, even if you should believe that Preeper was the man who discharged the gun that occasioned Hurley's death, the testimony for the defence which goes to exonerate him from any malicious desire to take life, and excuses him on the ground that he only committed the act that he might save his own life, is clear, uncontradicted and incontrovertible; the defence on this point is triumphant and unanswerable. Preeper was there, unoffending, performing no act of aggression, injuring no one, assailing no one; he is struck himself; he sees his comrades down, levelled around him—some flying to the woods; he retreats across the road for the purpose of gaining the woods also. He is pursued by Hurley and some half-dozen others—he turns,—what is he to do? Hurley was nearing him armed with these stones, any one of which might have caused death. Who can forget the memorable occurrence which, to the eternal disgrace of the Republic, some time since transpired in the Senate House of the United States, when Charles Sumner, a man of gentle and conciliatory manners, possessed of the finest genius, was by a single blow irreparably injured. Yes, gentlemen, one of the most accomplished minds of America was by a single blow on that delicate organization which unites mind and matter, rendered imbecile—his fine comprehensive intellect shattered, and his services lost to his profession and the public. Is a stone less dangerous than a stick? Of that you are the best judges; but I put it to you as men

who value your own persons, whether if pursued by a man so armed you would fly, when by the cast of a stone you might be stricken down and be either so injured as to become imbecile or to have your life sacrificed? Preeper considered his life endangered, and under such circumstances, I ask you whether he was not justified in availing himself of the weapon in his hand, and sacrificing the life of his assailant to protect his own? There is a wide distinction between legal and illegal assemblages: Preeper was present on the occasion in question, exercising his legitimate rights—a voter attending at the hustings for the purpose of recording his vote;—until assailed, he exhibited no hostile spirit, no desire to provoke strife or create a disturbance; when strife did occur he sought to avoid it, and took the life of Hurley (if he did it at all) only to preserve his own. Hurley paid the penalty for his own fierce passions and gross imprudence; it would be unjust to punish Preeper for an act which the deceased drove him to commit.

This trial, gentlemen, has occupied much of your time. The wings of the press will carry the evidence from one end of the Province to the other, and the wholesome lesson will, I hope, be taught to navvies and highlanders, Catholics and Protestants alike, that he who interferes with the exercise by the inhabitants of this country of their franchise cannot do so with impunity.

Preeper, even if guilty, has, under all the circumstances in my judgment, suffered enough; but I take the higher ground that the whole of the responsibility of this transaction rests, not on the accused, but on those who provoked the riot,—and, gentlemen, in conclusion let me say that I do not see how any jury could find the prisoner guilty. Upon every principle of law applicable to this case—upon the soundest moral principles the prisoner at the bar is entitled to a verdict of acquittal, which verdict, gentlemen, I feel assured you will render.

[At the close of his address the counsel was warmly applauded.]

The compiler of this pamphlet, having transcribed from the pages of the *Morning Chronicle* newspaper the speeches delivered before the Jury by the prisoner's counsel, the opening speech of the Attorney General having been transcribed from the *British Colonist*, it was considered desirable that the closing speech also of the Attorney General should have appeared before the Judge's charge. It has not, however, been printed or published in any of the public newspapers. An application was made to the publisher of the *Morning Chronicle* on the 22d December to ascertain if it could be obtained, and the reply was that he had not been able to procure it, although, with that object in view, so early as the 6th of December, he had forwarded to the Attorney General a note of which the following is a copy:—"The publisher of the *Morning Chronicle* presents his compliments to the Hon. Attorney General, and would be glad to be furnished with a report of his speech in the case of the Queen *vs.* Preeper, for publication previous to the Judge's charge in that cause." To which it appears no answer was returned.

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After the close of the Hon. Attorney General's Address, His Honor Judge WILKINS charged the Jury as follows:—

Gentlemen of the Jury.—The result of your deliberations in this important cause will not merely affect yourselves and your cotemporaries, but generations that succeed you upon this ever-changing stage of human existence. Your verdict will exercise a powerful influence upon the social happiness of the people of this Province, for it will decide whether peace and order, which are essential to the free elections of representatives in the General Assembly, shall be maintained by the fixed institutions and laws of the land alone, or whether electors, at future elections, may form armed combinations for their protection from apprehended violence, or for the free delivery of their votes. I regretted deeply to hear it avowed by the learned counsel for the prisoner that this was a *political case*. The declaration struck me as not in harmony with the place, or with the occasion. The prisoner is charged with a crime, which, if it be established against him, will subject him to an ignominious punishment, and deprive him of his liberty. The issue of his guilt or innocence is upon a trial in this Court, which you in your place, and I in mine, are bound by the most solemn obligations to conduct according to law and to the evidence. Your oath has charged you "*Well and truly to try, and true deliverance to make, between our Sovereign Lady the Queen and the prisoner at the bar, and a true verdict to give, according to the evidence.*" When your lips touched the sacred volume, and you assented to the prescribed adjuration, "*So help you God,*" you in effect prayed that as you should make true deliverance according to the evidence, so might the Almighty administer *help* to you when you stood at the eternal bar. Having, then, been thus adjured well and truly to try this cause, I will not insult you by the supposition that you could possibly be induced to regard this case as a *political question*, or to permit any other influences to affect your deliberations than grave and matured considerations of duty. The fatal act which led to this prosecution was indeed committed upon an occasion when free men were engaged in the exercise of a valuable and important political right, and when their passions were likely to be excited by the conflict of political opinions. But we owe it to ourselves, and to those who may come after us, so to act in the discharge of our respective duties here, that how violently soever that conflict may rage without these walls, within them it shall not intrude—that we carefully preserve for ourselves, and our children, this sanctuary pure and undefiled, wherein Law shall reign in its sacred majesty.

If you and I could be brought to prostitute our offices in the temple of justice to political partizanship—if the hideousness of party strife were to sully the purity of the trial by Jury—if prejudice and passion were to usurp the places of truth and justice here—what security would a colonial subject have for his property, his liberty, his life? If either of us reflects upon the strength of his passions, and infirmity of his nature, he will feel that he knows not how soon he may be even personally interested in upholding the supremacy of the law. The circumstances detailed by the witnesses, many of which, though

irrelevant, I did not shut out, from fear of prejudicing the prisoner's defence, cannot but have suggested the great social and political evils which result from riot and tumult at elections. That every elector should possess, and preserve inviolate, a right to the free exercise of his franchise, deeply concerns our happiness and prosperity as a people. Every good subject is bound to use all legal and constitutional means to uphold it; but it never can be promoted by a recourse to violence, nor by allowing any private man, or body of private men, to constitute themselves judges of the means by which it is to be maintained. If men can use fire-arms to protect them in the exercise of the right in question, who can guarantee to the community the safe and lawful use of these? The occasion, necessarily, excites the passions: an obstruction to the right, not very serious, perhaps, occurs—the gun is levelled—the trigger drawn—the fatal bullet is propelled into the midst of the assembled multitude—and innocent blood is shed. And, here, let me warn you, gentlemen, not to permit that natural indignation which you must feel at the lawless outrages which were committed at the election in question, to efface in your minds distinctions between right and wrong, between reason and prejudice. When you calmly weigh the testimony in this cause, you will find that, though savage brutality was practised by lawless men, in overpowering numbers against individuals, under the influence of vindictive feelings, for real or imagined insults, any organized, systematic attempt to prevent polling at the hustings, at the Grand Lake, is contradicted by the evidence. Hustling and jostling, and crowding and rude words, such as too commonly occur on such occasions, there were, undoubtedly; but there is entirely wanting the proof of any one elector being prevented from recording his vote. Until the armed men appeared in the neighborhood of the polling booth, the evidence presents not the semblance of anything like a general personal conflict, between the two political parties. The personal outrages that did occur before the general conflict, are to be deplored, and the offenders, if brought to justice, and convicted, deserve the most severe punishment. But that punishment must follow upon regular convictions, and must not be administered by the rash hands of an excited body of armed men. The same evidence that has been given on this trial would have brought these men first referred to, to judgment. Cruel violence was practised, *after the death of Hurley*, upon the fallen of the armed party, but *that* cannot and ought not, in the slightest degree, to influence your verdict. *That* violence does not even give a character to the previous acts, for the death of the deceased, as might have been anticipated, excited in the breasts of his party that terrible feeling of vengeance to which that violence must be referred.

I will now, gentlemen, point out to you the law that is to govern your verdict, and which it is my solemn duty to declare. To make it appear the more plainly, I shall put the evidence, where it is contradictory, in that aspect which is the most favorable to the prisoner. Even if the armed party with which he was associated, consisting at least of ten persons, had provided themselves with loaded fire-arms, and assembled together thus armed, *for the sole and real purpose of protecting each other, in the peaceful exercise of the*

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privilege of voting, from violence threatened by or apprehended from their opponents, at the hustings—and here I am putting a case which the facts, so far as they respect the purpose, do not warrant—still, their thus assembling was, in itself, a crime, and, if death ensued from the use of the guns by either of them, when thus assembled, and whilst acting in the prosecution of their common purpose,—every individual of the party present would be guilty of the crime of murder. It is quite necessary that you should understand that every tumultuous gathering of large bodies of men, especially with fire-arms, as it has an obvious tendency to excite alarm, and disturb the peace, is unlawful. If I am about to proceed to a market in the exercise of my calling, if it be such, and I have reason to apprehend violence on my way, I have, still, no right to proceed there with a concourse of men for my protection, especially of armed men. The laws for the preservation of the peace, and for personal protection, if appealed to, are deemed adequate to my protection; and I have no right, whilst seeking to prevent a breach of the peace, on the one hand, to do an act the probable effect of which will be a violation of it, on the other. Moreover, and that which I am about to announce has a particular application in this case, the law does not permit a combination of several men to be formed, for the purpose of avenging an injury done to one of them, or even of preventing an injury, or the invasion of a right, threatened to either of them; much less will it do so, if such combination be armed with deadly weapons. It is entirely opposed to the principles by which the public peace is preserved, in all countries where British institutions and laws prevail. If the acts of combining and arming were lawful in the particular electoral district in question, they are lawful throughout the province. Contemplate, then, the terrific results that would ensue, if such acts be resorted to, at pleasure, in every contested district, at some future general election. We shall be thrown back upon the barbarities of savage life!

The prisoner, gentlemen, but for one incident in this case, would, unquestionably, in the eye of the law, be guilty of the crime of murder, and must have been convicted of it, had he been charged with that offence. The incident to which I allude,—and most gladly do I seize upon it,—is the fact of the assault of the deceased upon the prisoner, when, according to the testimony of even the witnesses for the Crown, the former rushed upon the latter, immediately previous to the fatal shot, and endeavored forcibly to arrest his gun from him. I must add, with very deep regret, that I am unable to put to you this case more favorably for the prisoner, than by instructing you, that, if you believe that *that* or some other assault of the deceased under the circumstances proved, so excited the passions of the prisoner, at the moment, as to deprive him of the control of his reason, when he drew the trigger—you may, in view of the infirmities of our common nature, consider the homicide as reduced from that higher crime, which, otherwise, the law would have presumed, to the inferior crime of manslaughter, with which the indictment charges the prisoner, and of which, I am bound to say, the law and the evidence, *in any view of the facts in proof*, constrain you to find him guilty.

A legal justification of the fatal act, although it has been set up, is entirely

precluded by the facts, and by the law in connection with them. The law presumes every act of homicide to amount to the crime of murder, and it is for him to whom *that* presumption attaches, to reduce the crime to one of a lower grade, if he can do so; but this is not to be done by vague and doubtful evidence, but by testimony that, necessarily, excludes all reasonable doubt. Here the prisoner, charged with *manslaughter*, asserts his *perfect innocence*, and *pretends that the act of slaying was absolutely necessary in order to the preservation of his own life*, and that, *so being committed in self defence, it is excusable*. I will, first, suppose a state of facts to have existed, which has not been proved, namely, that the deceased had assaulted the prisoner in such a manner as to place his life in imminent danger from the threatened and impending violence,—still, I am bound to tell you that the slaying would not have been excusable, for it would not have been entirely and exclusively occasioned by *that* act of the deceased. The prisoner's own previous conduct must, then, have been held instrumental, in part, to his own destruction. His joining the armed assembly, under the circumstances, was, as I have already stated, illegal, and that armed assembly had a natural tendency to excite the fear of the deceased, and, from the instinct of self-preservation, to stimulate him to an attempt to disarm the prisoner, and his associates, or by force to prevent them from the threatened use, with fatal effect, of the arms that they unlawfully carried. But I will even go further, and suppose that the prisoner, on the occasion referred to, had been innocently and lawfully armed with his own gun, and, then, referring to the proved facts, and, where the facts are conflicting as to the conduct of Hurley, adopting that state of them which is most favorable to the prisoner, I unhesitatingly instruct you, that the prisoner, on the acknowledged principles of law, fails in his attempted justification.

The law, tender of human life, does not hold any homicide excusable, except it be *conclusively* proved that it was committed from absolute and inevitable necessity. Consider the deceased, then, as pursuing the prisoner, and threatening him with personal violence by means of stones held in his hands, the all-important question arises, “Could the prisoner have escaped with his life, or without receiving grievous bodily harm?” The obvious answer is, that he would have escaped, had he then retreated, because the event proved that *he did retreat and did escape*.

It were puerile to contend that the life of a young and active man, like that before you, *was in imminent danger from a threatened hand that grasped no weapon more dangerous than a stone*.

The difficulties, however, attending this defence are insuperable, if we view the case in connection with the unlawful assembling, for, in that case, if the alternative presented were, whether, when deceased assaulted prisoner, he should take the life of the assailant, or recede from the position—the armed position—which he had unlawfully taken on the road, and retreat to the woods,—he was bound, at his peril, to adopt the latter part of that alternative.

Gentlemen, you must not for a moment cease to bear in mind, that, on the clearest principles of criminal law, there existed no such relation between the prisoner and Gray, or Lowrie, the only persons outraged, as would authorize

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him to use even the slightest degree of force to avenge the wrongs, or even to protect the person of either of these men—whilst there is not a particle of testimony to shew that the prisoner had been, previously to the rencounter with the armed party, assaulted by anybody. Had not the prisoner been at the place of the homicide, in an unlawful posture that menaced the public peace, in all human probability he would not have provoked the assault of the deceased. Being assaulted, if he had fled, at first, as he did at last, a human life would have been spared. Having destroyed that life, it were monstrous to say that he is innocent.

I will, now, before I proceed to read over my minutes, of the evidence, make one or two remarks on points yet remaining, respecting which it is proper that you should be instructed. These are made in connection with the principles that I have already announced, namely, that the evidence shews that the prisoner actually slew the deceased by drawing the trigger, or, if there could possibly be any doubt on that point, he is, in point of law responsible for *that* act, if done by some other of his associates. When you come to deliberate on the testimony, you will find that there is evidence derived from witnesses called by the prisoner, as well as from those produced by the Crown, which, beyond all reasonable doubt, establishes the homicide to have been committed by the very hand of the prisoner. This is established by eye and ear-witnesses, and by the conduct and declaration of the prisoner, after the death of the deceased. Mr. Young has told you that you are at liberty to judge of *the law*. I tell you, that, although having the power to give a general verdict, involving a mixed question of law and fact, you do in effect in a certain sense decide upon the law, you are by the constitution judges of the *fact*, whilst he who occupies the position that I fill, is constitutionally charged with the duty of instructing you upon the *law*. With regard to the evidence, however, which is your peculiar province, you must understand that you have no arbitrary power to receive some witnesses, and reject others. You are not at liberty, especially in a criminal cause, to shut out from your solemn deliberations the testimony of a witness, who stands before you without exception, whose integrity is unsuspected, and whose knowledge of the facts of which he testifies is beyond doubt. I venture to make this last observation to you, because Mr. Young told you that you are not bound to believe every witness. I will now proceed to refresh your memories as to the voluminous testimony, by reading over to you my minutes.

The Judge then read until he came to about the close of the evidence given for the Crown, when he addressed himself to the foreman and asked if the Jury wished him to read the whole of the minutes? C. C. Tropolet, as foreman, after consultation with his fellow Jurors near him, replied, that the Jury preferred that he should take his own course.

After reading a little further, he again repeated his question, in nearly the same language, when one of the Jurymen, on the foreman's left, remarked that he "thought it not necessary," or words to that effect. Thereupon the Jury were permitted to retire, and in about three quarters of an hour, returned with a verdict of—NOT GUILTY.

The Court room and galleries were densely crowded by parties evidently not in sympathy with the prisoner, for there was a decided sensation produced when the verdict was pronounced, and partly suppressed expressions, apparently from the gallery, were heard, of "murder him," "murder him."

Here ends this remarkable trial, upon which it may not be amiss to add a few remarks:—

The charge of Judge WILKINS (the italics in it are his own—the *British Colonist*, from whence it is taken, alleges that it is printed as furnished by the Judge himself) was made the subject of severe criticism in the public newspapers. The *Morning Chronicle* speaking of it says:

"It is not so much what is *there*, as what is *not there*, in which it differs from the spoken charge. Among other things, we miss, at the commencement, an elaborate attack upon Mr. Young's position, that in criminal cases jurors are judges of *law and fact*. Towards the close, it is briefly referred to, and that is all. There is a good deal in the *manner* that cannot be put upon paper. There is the staid, grave expositor of law discharging his own duties, leaving others to discharge theirs,—assuming that jurymen, as well as others, are Christian men, understanding and appreciating the solemnity of an oath—that is *one thing*; and there is the impassioned action of the advocate, vehemence in expression, warming up, as he proceeds, invoking every sacred consideration calculated to stir the deepest feelings of the human heart, calling them all into active exercise adversely to a prisoner without any reference to the benefit of doubts, always accorded in such cases, and startling the audience with elaborately rounded periods, figures of speech, and climaxes—that is *quite another*.

"It is not a common thing in Nova Scotia to hear a Judge *cheered*; and we only leave our readers to imagine what kind of feelings a charge must have excited, when a somewhat repressed shout, at the close of this trial, was heard from men of *mercurial* temperament crying, 'Hurrah! for Judge Wilkins.'"

Referring to that portion of the charge where the Judge observes that "it were puerile to contend that a young and active man like that before you was in imminent danger from a threatened hand that grasped no weapon more dangerous than a stone"—he seems to forget or ignore the fact that this was not a hand to hand contest between two individuals, but a ferocious attack of excited, infuriated men, who had given abundant evidence of *their malicious intent*, and numbering at least ten to one, themselves the stronger party, all or mostly all armed with sticks or stones, all this is ignored, or at most slightly and dimly brought out,—whereupon the same paper remarks:

"That the assailants in this case were about ten to one, hardly admits of doubt. That they were armed with *sticks and stones*, is equally clear. Judge Wilkins seems to have thought *stones* to be most 'puerile' weapons, even in the hands of such men as Gilfoxy, Hurley, Kennedy, or Cain Mahaney.

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"If he had had the honor of presiding at capital trials as they were conducted in the olden time, had he sat in a Jewish Court with King Solomon on his left—considered a pretty able Judge in his day—he might possibly have entertained a somewhat different opinion of what 'virtue there is in stones' as dangerous or deadly weapons. His Honor might have been called upon in that case, to have given sentence of *capital punishment* to be inflicted by 'weapons no more dangerous than stones.'

"We remember in our reading to have perused a very touching incident related by a *Dr. Luke*, of the manner in which a very eminent man, a *Mr. Stephen*—no relation of Alexander, we suppose—a Deacon of the early Christian Church, came to an untimely death, in consequence of some stones hurled at him by a few of his enraged countrymen.

"A Greater than Stephen, once on a time, narrowly escaped a similar fate in the same country and from the same people. Another individual at a later period, relating hairbreadth escapes, and the perils of an eventful life, amongst other things says, 'once was I stoned,'—on which occasion, if we remember rightly, he was taken up for *dead*.

"Imagine a stone of the size of a large orange, or larger, hurled with all the force of a muscular arm and planted fair upon a man's temple or face, or upon his forehead, what would naturally be the effect?

"It is related on good authority, that a stripling once went out with a sling, and having selected a smooth stone from a certain brook, with it slew a giant, and saved a nation.

"It is clear that before any fire-arms were brought upon the field, the navies not to speak of oak and beech sticks, were employing *stones*—Hurley himself used them against Lowrie when Cain Mahaney tripped him over the bank.

"We have read and heard rather too much about persons being 'stoned to death,' to coincide with the opinion of the learned Judge, who puts his question, as if any serious injury to be apprehended from a stone, was an idea too ridiculous, too preposterous to be entertained for a single moment. It is a subject, however, that requires no great amount of law learning to form an opinion about, and so every body is at liberty, we suppose, without giving or taking offence, to form and enjoy their own."

But there are more serious objections to this charge, than those which have been referred to by the press of the day. Mr. Justice Wilkins, after some preface says:

"I will now gentlemen point out to you the law that is to govern your verdict, and which it is my solemn duty to declare. To make it appear the more plainly, I shall put the evidence where it is contradictory in that aspect which is the most favorable to the prisoner. Even if the *armed men with which* (whom) he (Preeper) was associated, consisting *at least of ten persons*, had provided themselves with loaded fire-arms, and *assembled together thus armed*, for the sole and real purpose of protecting each other in the peaceful exercise of the privilege of voting, from violence threatened by, or

apprehended from, their opponents at the hustings,—and here I am putting a case which the facts, so far as they respect this case, do not warrant,—still, *their thus assembling was in itself a crime*, and if death ensued from the use of the guns, by *either* of them when thus assembled, and whilst acting in the prosecution of their common purpose, *every individual of the party would be guilty of the crime of murder.*”

Now, whether this, in the abstract, be law or not, it may not be amiss *very carefully to consider.*

It sounds rather strangely to be thus told, that it is a *crime* for armed men to assemble *PEACEFULLY* together, for a *lawful* purpose, where there is no pretence that the *intent*, either as to the arming or the assaulting, was improper or illegal,—no riotous or tumultuous gathering, but on the contrary that the gathering together was *legal* and *peaceful*, and the arming purely what reasonable men would naturally do where danger was apprehended,—it does fall upon one's ear as new and strange. For if that be law, to say the least of it, it has not been very universally understood up to the present time.

It will probably be remembered by many of the readers of this pamphlet that the Puritans were accustomed to arm themselves, and go armed to Church as a protection against the attacks of Indians in the early history of New England. Nobody then supposed that this was criminal, and when an unfortunate red-man fell, the victim of some ill-advised attack, it was never heard of that the whole congregation, or even the armed portion of it, were chargeable with the crime of *murder*.

But aside from the historical fact, suppose that a congregation, if you choose, of *Roman Catholics*, are in the habit of meeting peaceably for public worship, and from threats circulating and other causes, they have reasonable grounds to believe that their lives and persons are unsafe, unless they arm themselves or have arms provided near the place of meeting. Suppose then that a party of *Protestants* ten times their numbers, without any provocation whatever, fell upon them and with sticks and stones and clubs beat them, as Reeves, and King, and Lowrie were beaten, and one of the assailants in the act of hurling a stone with intent to do some great bodily harm is mortally wounded. Is it the law of England that not only the slayer of this offender, but the whole party who took arms there to defend themselves, are guilty of *murder*? Is it? Can it be so? Suppose, again, that Preeper and Reeves and others were to take a contract to build a portion of railway, and Mahaney and Gilfoxy and their comrades, unwilling that Protestants be upon these works, threatened that if they came upon the ground they “had better bring their coffins with them;” and that instead of a coffin, each man, like the Jews that built the second temple, takes a weapon, a revolver, in his pocket: is it a fact, that by so doing every man has committed a crime? And if the assailants persist, and, ten to one, with sticks and stones rush upon these contractors *peaceably* engaged in the *lawful* and laudable act of executing their contract, and one of them is slain, is it *law* in Nova Scotia that these contractors are liable to be

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taken up and hanged? Every one of them? It cannot be so. The opinion has been prevalent, that any man, and any number of men, might, if he or they choose, carry arms, providing there was no tumultuous gathering, and no illegal intent or object in view. Suppose the assembling to be that of a New Year's gathering, to shoot at a goose, or at a target? Suppose a volunteer company, or a collection of lads out target-shooting? Fifty cases may be supposed of similar bearing.

But such is not this case. These parties were summoned by the Queen's writ to attend and poll their votes at an election. There was no assemblage of armed men, "consisting of ten persons at least," on this occasion, excepting after the assault and murderous attack of the navvies. Kenty says, "on the morning of the election, while I was shaving, Peverel came in and told me somebody wanted to see me; I found *four or five* men outside; they asked me if they could put their horses and waggons up in my barn—others came—I was asked to put some things in my house—I was told by Augustus Robinson that they were fire arms; I said what are you going to do with these guns—Robinson said we have brought them *to protect ourselves going home*. They would have to pass a place called Shanty Town on their way home. I told them I didn't think it was prudent to leave them in the waggon, they had better go into the house. I didn't know the guns were coming there."

This is all we have in the case as to the history of the collection of fire-arms. None of them were armed, although arms were brought by Robinson, one of those then there. These guns were left about a quarter of a mile from the polling place, and if intended for the object professed, "to protect themselves going home," were deposited in just the *right* place to serve that object. But if brought to be used at the election, were left in just the *wrong* place to be of use.

Let us apply the law as laid down by the learned Judge to the case of George Gray. This man had left White's for home; he is set upon by the navvies and cruelly beaten; he escapes, retreats, is pressed closely by his pursuers, wrenches a gun from the hands of some person, he knows not who, and in the effort it goes off accidentally; he is then overpowered, and again beaten, and left all but dead. In the meantime, in another part of the field, Hurley is killed. And now, from the law as propounded, legitimately is deduced this *monstrous conclusion*, that not only is the slayer of Hurley guilty of a homicide, (if retreating, manslaughter—if not retreating, murder,) but Gray, too, as one of the "armed men" is guilty also of *murder*! Not only so,—but Stewart, who interfered to preserve the peace, having come with Peverel and Robinson who brought the arms to Kenty's, if that be the "assembling" referred to, he is guilty of *murder*; and Robinson, who for aught that appears went home, for he is not seen or heard of again that day, he is guilty of *murder*, and so is Peverel, and so is Taylor, that is, if the slayer committed that offence,—they being the four parties who came with the guns.

There can be no doubt, that the learned Judge has laid down his proposition too broadly, and without sufficient qualification. In the administration of

criminal law the *intent* is everything. The law, in certain cases, implies an evil intent, but the conviction is not the less based upon the assumption that the homicide, if not excusable, was committed with a *felonious intent*.

According to the ruling of Mr. Justice Wilkins in this case, every man that co-operates in resisting the outrage of the assailants was guilty of manslaughter. But there is little room for doubt that the Jury, in contradistinction to the Judge, as in hundreds of other cases, have taken the proper view of this subject.

It is melancholy to reflect upon, that a human life should thus have been wasted, but who of all those who heard this trial, or shall peruse this history of it, but will feel that, similarly situated, they would have acted precisely as Preper and his comrades did? There seems to have been no alternative.

But before this subject is finally dismissed, and this tragic story is closed, it may not be amiss to look at the case in another aspect and from another and different stand point.

What will the public now think and say of the conduct of the Government, of that of the Railway Board, and of their Superintendent of Traffic, Mr. Jas. R. Mosse? The revelations of the Crown witnesses have brought home to these parties, charges of a most audacious and criminal character.

It is now beyond all dispute, that the railway itself, and the public funds of the country, have been prostituted to purposes of a most culpable nature. An organized and successful effort to bribe, out of the public treasury, a great mass of labourers employed upon public works, to violate the laws of the land and the purity of elections, has been detected. The officials who were openly active in this base and detestable crime, although the offence is not, and can not be denied, are continued in government employ,—proving clearly and satisfactorily that they had the sanction of the ministers of the Crown for the course they have pursued.

Lord Mulgrave's advisers seem not to be aware of the enormity of the offence that has been committed. If men high in office, rank, and power, commit with impunity such acts as have been laid bare in this case, what a fearful example is thus set to subordinates and others! Is the petty larceny rogue that steals a sheep from a neighbour's pasture, or the clerk that robs his employer of a shilling, to be clapped up into the criminal box, convicted and sent to the penitentiary, and the men who rob the public revenue of hundreds of pounds for the most criminal of all purposes—to bribe the humble artizan, the needy operative, and then send him to swear that he is an elector, and entitled to vote,—are these men to go unwhipt of justice? Time will disclose.